

AMENDED AND RESTATED INTERLOCAL AGREEMENT 4600014524
2020-0050

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT ("**Agreement**") made and entered into pursuant to Tex. Gov't. Code Ann., Chapter 791, Interlocal Cooperation Contracts (Vernon, 1997) by and between the **Harris County Flood Control District**, ("**District**"), a special purpose district created by the Texas Legislature in 1937 and governed by Harris County Commissioners Court, also known as the Subrecipient, and the **City of Houston**, ("**City**") a municipal corporation and home-rule city under the laws of the State of Texas, principally located in Harris County, Texas, acting by and through its **Housing and Community Development Department**, ("**HCDD**"). The District and the City are individually referred to herein sometimes as a "Party," and collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the District was organized, created and authorized by the Texas Legislature in 1937 in response to devastating floods that struck the region in 1929 and 1935 to act as a duly constituted District of the County for the purpose of aiding, assisting and acting on behalf of the County in the performance of its governmental functions to promote the common good and general welfare of Harris County and to provide flood damage reduction projects that work, with appropriate regard for community and natural values; and

WHEREAS, the City's HCDD has among its duties the administration of the Community Development Block Grant Program, authorized under Title I of the Housing and Community Development Act of 1974, as amended ("**Act**"), and one of the primary objectives of the programs authorized under the Act is the provision of decent housing and a suitable living environment principally for persons of low and moderate income; and

WHEREAS, the City Council of the City of Houston ("**City Council**") acting pursuant to City of Houston Ordinance No. 2016-705 passed and approved on September 14, 2016, authorized the submission of an Action Plan for Disaster Recovery – 2015 Flood Events ("**Action Plan**"), including an Application for Community Development Block Grant Disaster Recovery ("**CDBG-DR15**") funds associated with the 2015 Flood Events, to the United States Department of Housing and Urban Development ("**HUD**") pursuant to the Act and later entered into a Grant Agreement with HUD ("**Grant Agreement**") to receive federal funding for a CDBG-DR15 Flood Events Project under the Act; and

WHEREAS, the Application was approved and the City was awarded \$66,560,000 in CDBG-DR15 funds under the Federal Award Identification No. (FAIN) B-16-MH-48-0001 on December 07, 2016. The federal funds are made available under the Catalog of Federal Domestic Assistance (CFDA) No. 14.218, Community Development Block Grant/Entitlement Grants. The award will not be used for Research & Development (R&D).

WHEREAS, the Action Plan submitted as part of the Grant Agreement included a Strategic Buyout Program for certain low and moderate income areas identified by HCDD as eligible for funding under the Act, in compliance with federal regulations codified at 24 CFR Part 570, Billing Code: 4210-67 Department of Housing and Urban Development [Docket No. FR-5938-N-01] (Pub. L. 114-113) ("Federal Register Notices June 9, 2016"), as updated by Federal Register June 17, 2016 and Federal Register August 7, 2017 [Docket No. FR-6039-N-01] (Pub. Law 115-31) and other CDBG regulations and requirements applicable to the CDBG-DR15 Flood Events; and

WHEREAS, the District is currently administering a Voluntary Buyout Program in Harris County; and

WHEREAS, the primary goal of this Agreement is for the City to provide CDBG-DR15 Flood Event funds in an amount not to exceed \$10,660,000.00 to the District to perform voluntary property buyout services to eligible property owner applicants in certain neighborhoods of the City, including the purchase of structures in the floodplain, the demolition and/or removal of structures, and relocation of eligible households pursuant to the Harris County Relocation Assistance Regulations, pending Harris County Commissioners Court approval, or the Uniform Relocation Assistance And Real Property Acquisition Policies For Federal And Federally Assisted Programs, as amended by the District's policy to treat voluntary owners and mandatory owners equally for purposes of housing supplement, with a cap of \$31,000.00 for voluntary buyouts ("Relocation Assistance Policy"), as applicable to the Project ("Project"); and

WHEREAS, the District, among other things, will determine the eligibility and provide a list of property owners in certain neighborhoods identified by HCDD, whose property has been approved and deemed eligible based on Project requirements; and

WHEREAS, the neighborhoods/areas of interest (aligned with flood concentration areas identified in the City's Action Plan) identified by HCDD are Braeburn Glen, Glenburnie & Cashiola, and Langwood; and

WHEREAS, the District will attempt to negotiate a purchase agreement with those property owners whose property has been approved by the District for acquisition, that outlines the terms and conditions of the sale of their property in compliance with the Voluntary Buyout Program, and other applicable CDBG regulations and requirements that govern the CDBG-DR15 Flood Events Program; and

WHEREAS, the total budget for the Project shall not exceed \$10,660,000.00; and

WHEREAS, the Project will provide several benefits to the community, including; relocating families to higher ground and out of harm's way, eliminating future flood damages and health and safety risks for owners and rescuers, reducing repetitive subsidized flood insurance and federal disaster assistance, restoring floodplains to their natural and beneficial function for storm water storage, creating open space with the potential for community amenities (i.e. parks, gardens, playing fields, stormwater detention, etc.), and eliminating the threat of flooding in the affected targeted areas; and

WHEREAS, the "Scope of Work" attached hereto as **EXHIBIT B** and incorporated herein by reference, more particularly describes the Work to be performed by the District which will be funded under this Agreement ("Work"); and

WHEREAS, the Work will be carried out in accordance with the CDBG-DR15 Flood Events Program regulations and requirements, including but not limited to those attached hereto and incorporated herein under **EXHIBIT D**; and

WHEREAS, this federal Voluntary Property Buyout Project will reduce the number of flood prone homes in low and moderate income areas of the City; and

WHEREAS, the City desires the competent performance of certain services more fully described in this Agreement; and

WHEREAS, the City and the District have entered into this Agreement wherein the District agrees to undertake planning, design, demolition and buyout of certain properties in the areas identified above which were damaged in the 2015 Flood Events and relocation of eligible households, during the term of this Agreement; and

WHEREAS, the above recitals are incorporated into this Agreement for all purposes; and

WHEREAS, the City is acting pursuant to Chapter 373 and 374 of the Texas Local Government Code.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and benefits to the District and the City, the Parties agree as follows:

ARTICLE I

Statement of Work

1.1 The District hereby agrees that, in consideration of the payment of the sum of an amount not to exceed \$10,660,000.00, as specified in **EXHIBITS A and C**, Project Summary and Budget, respectively, it will competently perform or cause others to competently perform all of the Work set forth in detail under **EXHIBIT B**, Scope of Work. The District will acquire title to the properties in its own name and will maintain the properties to the same degree and like manner as other similar properties within the District, using its own equipment and personnel or contracts as appropriate and in accordance with Project requirements.

1.2 The District represents that it has, or will obtain, at its sole expense, all personnel required to facilitate the performance of the Work under this Agreement.

1.3 All Work to be done under this Agreement shall be performed or caused to be performed by the District under its supervision and all personnel engaged in performing said Work shall be fully qualified and shall have any licenses or permits required under law to perform such Work.

1.4 The City and District acknowledge and agree that their representatives have attended a pre-program meeting and have familiarized themselves with the materials

related to performance of the Work and compliance with the federal regulations that govern this Project, including, but not limited to, the Act, the CDBG regulations set forth at 24 CFR Part 570, Federal Register Notices dated June 9, 2016, June 17, 2016 and August 7, 2017, applicable CDBG regulations and requirements relating to the CDBG-DR15 Flood Events Voluntary Buyout Program, and Uniform Relocation Act of 1970 as amended, MWDBE, and Section 3 Plan, portions of these last 3 requirements are set forth under **EXHIBITS E, H, and L**, respectively.

1.5 The District shall utilize the funds awarded pursuant to this Agreement in accordance with the Budget, attached hereto as **EXHIBIT C**.

1.6 The District understands that it shall be held to the auditing requirements set forth at 2 CFR Part 200, Subpart F – Audit Requirements.

ARTICLE II

Time of Performance

2.1 The term of this Agreement shall begin on the countersignature date of the City Controller or approval by Harris County Commissioners Court, whichever occurs later, and end on the date of the earlier to occur of a) the Closeout of the Project pursuant to this Agreement, or b) five (5) years from the countersignature date of the City Controller on this Agreement, unless sooner terminated as provided for in this Agreement. The District acknowledges and agrees that any Work performed after the termination date of this Agreement, unless an extension of time as provided for under Section 2.3 of this Agreement has been granted, will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such Work unless the City Council approves an agreement to do so in its sole discretion. Notwithstanding anything contained herein to the contrary, the District shall have thirty-six (36) months from the date of countersignature of the Agreement by the City Controller to acquire as many eligible properties on a voluntary basis as possible until time expires or funds are depleted under this Agreement, unless the Director in his sole discretion authorizes an extension for acquisition in writing.

2.2 The Work to be performed under this Agreement shall be completed on or before the date described in Section 2.1 hereinabove, or any later completion date permitted by extensions granted by the Director under the terms of the 2015 Flood Events Program Requirements.

2.3 This Agreement may be extended for up to six (6) months by the Director of HCDD ("Director"), in his or her sole discretion, by written notice to District prior to the expiration of the initial term hereof. Extensions in excess of six (6) months must be by formal amendment and approved by the City Council of the City of Houston ("City Council"). Prior to the expiration of each further extension approved by City Council, the Director may extend this Agreement for up to an additional six (6) months, in his or her sole discretion, by written notice to the District.

ARTICLE III

Compensation and Payment

3.1 For and in consideration of the services performed under this Agreement, the City agrees to pay the District a sum not to exceed Ten Million Six Hundred Sixty Thousand No/100 Dollars (\$10,660,000.00) as set forth in **EXHIBIT C**, Budget, to include purchase and closing costs, appraisal fees, demolition costs, relocation/supplements and moving expenses, solely for the reimbursement of costs allowable under this Agreement and the City's Grant Agreement with HUD. The City shall not be liable for the reimbursement of any expenses which are not allowable under the terms of this Agreement and the City's Grant Agreement with HUD. Notwithstanding any other provision herein which may be read to the contrary, the District has not and is not obligated to appropriate funds to fulfill any obligation hereunder. Furthermore, the District shall not be obligated to engage in any work or services hereunder that would cause the District to expend funds in excess of the funds provided to the District by the City.

3.2 It is expressly agreed that in no event will the total amount of disbursement due to the District by the City under the terms of this Agreement exceed the sum set out under Section 3.1 above.

3.3 The City shall pay the District on a periodic disbursement basis as described in Section 3.5.

3.4 Prior to closing on a property, the District will

- a) Initiate a pre-payment process in which the District will submit for preliminary approval by the City a list of the property owner applicants and anticipated project closing costs to acquire each property, which documentation shall include, but is not limited to the following items:
 1. Purchase Offers,
 2. HUD Settlement Statements,
 3. Copies of tax assessment records,
 4. Copies of fully certified appraisals, including a review appraisal, as a basis for fair market value,
 5. Relocation assistance documents including, but are not limited to: housing/rental supplements, moving and incidental costs per Harris County Relocation Assistance Policy, and
 6. Demolition documents.
- b) Follow-up documentation will be provided by the District for review and final approval by the City during the next phase of the compensation and payment process, which shall include copies of all invoices or other documentation to support actual payments made by the District relating to the Project.
- c) The District and the City agree to work together, and with HUD, to ensure the CDBG-DR15 Program covered by the Agreement is carried out and completed in full compliance with HUD's CDBG-DR15 Program Requirements.

3.5 The District must submit a payment request up to thirty (30) days prior to an anticipated reimbursement. The reimbursement requests shall include original invoices, forms provided by the City, and any other documentation reasonably requested by the Director. Reimbursement requests shall be subject to the approval of the Director, the approval to be promptly made but in no event longer than seven (7) calendar days from receipt of reimbursement request. Payment shall be made on a reimbursement request within ten (10) days of the date the request is approved by the Director. Payment shall be in the amount determined by the Director to be allowable under this Agreement and the Grant Agreement with HUD. Payment to the District shall be made within thirty (30) days from the Director's approval.

3.6 In an effort to ensure the Project is handled efficiently and effectively, the City and District have put processes in place throughout this Agreement to prevent the occurrence of ineligible costs and disallowed expenditures, and agree to jointly respond to HUD in the event of any audit findings and/or exceptions related to payments to the District under this Agreement.

ARTICLE IV

Budget

4.1 The Budget covering the Work to be performed, activities and cost categories under this Agreement, is attached hereto as **EXHIBIT C**. All payments due to the District shall be made in accordance with such Budget.

4.2 The District may, with the written approval of the Director, reallocate funds among the various line items and categories within the Budget.

4.3 The District shall certify in writing that any reallocation of funds made pursuant to Section 4.2 will not result in a substantial change in the Work contained in the Scope of Work as detailed in **EXHIBIT B** and that such reallocation will not impair the District's ability to perform the Work required under the Agreement.

4.4 The District understands that any reallocation of funds made pursuant to Section 4.2 that results in a substantial change in the Work program contained in the Scope of Work as detailed in **EXHIBIT B** shall require a formal amendment that must be approved by City Council.

ARTICLE V

Reports and Evaluations

5.1 The District will submit the following reports to the Director on the dates indicated:

- a) A Fiscal Report, quarterly on the 20th day of the calendar month following the end of each calendar quarter. This report shall consist of a trial balance taken from its General Ledger or a copy of its Revenue Expenditures and Balance Sheet, and a copy of its quarterly bank account(s) reconciliation report(s).

- b) A Program Report, monthly on the 5th day of each calendar month for the preceding calendar month. The District shall furnish the City with information and data concerning all matters covered by this Agreement and/or required by HUD. The information furnished to the City will be used to meet HUD's reporting requirements, measure the progress of the Project, evaluate the Project's impact, and exercise general monitoring of the Project.

- a. Program reports consists of but are not limited to:

- i. FEMA (TDEM HMGP), and
- ii. HCDD CDBG-DR Quarterly Progress Report Buyout Projects – Performance Measure/Reporting as detailed in **Exhibit M**.

5.2. Upon completion of the written reports, the District shall provide the Director with copies of all back-up documents or papers relating to or substantiating such reports.

5.3. Failure to comply with the reporting requirements of this Article V shall be a material breach of the Agreement and compensation and expense reimbursements to the District may be withheld until such time as the reports and back-up materials are submitted.

5.4. The District, in addition to the reports required under Section 5.1, shall promptly provide any other information requested or required by HUD and requested in writing by the Director and in the possession of the District.

5.5 The District agrees to attend meetings as may be scheduled by the Director during the term of this Agreement in order to discuss any reports or the District's general progress in performing its obligations under this Agreement.

5.6 The District agrees to allow City representatives immediate access to and the right to examine, copy or reproduce all records, books, papers and documentation of any nature regarding the Project which is the subject of this Agreement.

5.7 The Director and/or other City/HUD representatives shall have the right to perform, or cause to be performed, (1) audits of the books and records of the District applicable to this Project, and (2) inspections of all places where Work is undertaken in connection with this Agreement. The District shall be required to keep such books and records available for such purposes for at least four (4) years after the termination of this Agreement. Nothing in this provision shall be construed to limit or in any way restrict the time for bringing a cause of action or any applicable statute of limitations.

5.8 The District shall promptly report to the Director any conditions, transactions, situations or circumstances, encountered by the District which would seem to warrant a special report in more detail than that which is necessary to perform the Scope of Work specified in this Agreement, including but not limited to, notices from HUD or other cognizant federal agencies, and grievances and lawsuits, real or threatened.

5.9 Project monitoring will be carried out through a comprehensive review at least once annually during the term of this Agreement, including any renewal or extension of the Agreement and as often as necessary to ensure compliance with this Agreement.

5.10 The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. The District covenants to provide to the City Attorney all documents and records in its possession that the City Attorney deems necessary to assist in determining the District's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

5.11 Additionally, the District shall maintain any financial records as may be required by 24 CFR Part 84, 24 CFR Part 570, Federal Register June 9, 2016, as updated, and or any other financial mandates deemed necessary to document compliance with the terms of this Agreement.

ARTICLE VI

Capacity and Capability

6.1 District acknowledges that it has the capacity and capability to effectively perform the Work set forth in detail in **EXHIBIT B**, Scope of Work.

6.2 District agrees that no fees will be charged to any eligible person for any Work which is funded pursuant to this Agreement.

ARTICLE VII

Other Program Standards and Requirements

District agrees to carry out the Work described in this Agreement, in accordance with all applicable local, state and federal laws including, but not limited to the Act, 24 CFR Part 570, Federal Contract Requirements attached hereto under **EXHIBIT D**, 2 CFR §200.331 attached hereto under **EXHIBIT N**, Federal Register June 9, 2016, as updated June 17, 2016, and August 7, 2017, the Grant Agreement, and any applicable CDBG-DR15 Flood Events Program regulations and requirements.

ARTICLE VIII

Contractual Limitations

8.1 District agrees that it will carry out Work in a manner free from religious influences or prejudice.

8.2 District shall adhere to the covenants and representations that follow:

- a) District agrees that in connection with any Work performed under this Agreement it will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
- b) District agrees that it will not discriminate against any person applying to perform Work on the basis of religion and will not limit such Work or give preference to persons on the basis of religion; and
- c) District agrees it will provide no religious instruction or counseling, conduct no religious workshop or services, engage in no religious proselytizing, and exert no other religious influence in the performance of such Work under this Agreement.

ARTICLE IX**Suspension and Termination**

Notwithstanding anything contained herein to the contrary, in accordance with 2 CFR §200.338, suspension or termination of this Agreement may occur if the District fails to comply with any term of this Agreement. This Agreement may also be terminated for convenience in accordance with 2 CFR §200.339. The District may terminate this Agreement if the District determines that the City has failed to comply with any term of this Agreement or failed to follow any federal, state, or local rules, laws, ordinances, or regulations applicable to this Agreement. Upon any such termination, the District will cease all services and the City shall reimburse the District within thirty (30) days for the cost of each service performed in compliance with this Agreement and within the Scope of Work prior to termination not yet reimbursed.

ARTICLE X**Reappropriation of Funds**

10.1 The City reserves the right to reappropriate, as may become necessary, the funds for this Project if the cumulative expenditures committed under this Agreement for any particular time period fall substantially below the budgeted expenditures for the same period. In such event, the District agrees to re-budget the estimated cost of the remaining Work under this Agreement. Such re-budgeting for decreased expenditures will require a formal amendment of this Agreement and shall be evidenced by a revised budget approved on behalf of the District and the City. Any excess funds remaining after said re-budgeting will be subject to reallocation to other new or existing projects at the sole discretion of the City.

10.2 Failure of the Parties to approve any revised budget as set forth in Section 10.1 shall not be a default of District's nor the City's obligations under this Agreement. Any revised budget must include payment for all eligible expenditures made by the District prior to notice by the City of the necessity to re-budget.

ARTICLE XI**Obligation of City**

The District acknowledges that the City's obligation hereunder for payment, if any, is limited to funds received pursuant to the CDBG-DR15 Grant Agreement between the City and HUD. Any Work performed under this Agreement must be done after the countersignature date of the City Controller. If the City receives information that the funds for the Project will fall below what was anticipated by the Parties, the City shall immediately inform the District.

ARTICLE XII**Contract Documents**

12.1 This Agreement includes the following Exhibits which are attached hereto and made a part hereof for all purposes:

- EXHIBIT A** - Project Summary
- EXHIBIT B** - Scope of Work
- EXHIBIT C** - Budget
- EXHIBIT D** - Federal Contract Requirements
- EXHIBIT E** - MWBE Requirements
- EXHIBIT F** - Anti-Lobbying Certification
- EXHIBIT G** - Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- EXHIBIT H** - Section 3 Regulations
- EXHIBIT I** - (Intentionally Omitted)
- EXHIBIT J** - (Intentionally Omitted)
- EXHIBIT K** - Federal Register June 9, 2016 – Billing Code: 4210-67 Department of Housing and Urban Development [Docket No. FR-5938-N-01] (Pub. L. 114-113), as updated by Federal Register June 17, 2016 and Federal Register August 7, 2017 [Docket No. FR 6039-N-01] (Pub. Law 115-31)
- EXHIBIT L** - Relocation Assurances
- EXHIBIT M** - CDBG-DR Quarterly Progress Report Buyout Projects Performance Measure/Reporting
- EXHIBIT N** - Requirements for Pass-Through Entities

12.2 This Agreement and the Exhibits mentioned in Section 12.1 embody the entire agreement between the City and the District and there are no other agreements, representations or warranties between the City and the District in connection with this Agreement. The District will comply with the provisions included in the Exhibits to the extent that they apply to the District and to the extent authorized by local, state and federal law.

ARTICLE XIII**Notices**

All notices and communications under this Agreement shall be mailed by facsimile, or certified mail, return receipt requested, or delivered to the District at the following address:

Harris County Flood Control District
 9900 Northwest Freeway
 Houston, TX 77092
 Attention: Executive Director
 713-684-4000 (phone)
 713-684-4102 (fax)

All notices and communications under this Agreement shall be mailed by facsimile, or certified mail, return receipt requested, or delivered to the City at the following address:

City of Houston
Housing and Community Development Department
2100 Travis Street, 9th Floor
Houston, Texas 77002
Attn: Tom McCasland, Director

with a copy to:
City of Houston Legal Department
900 Bagby, 3rd Floor
Houston, TX 77002
Attention: City Attorney/HCDD

And

Department of Housing and Community Development
2100 Travis Street, 9th Floor
Houston, TX 77007
Attention: Ana Martinez
Email: ana.patino-martinez@houstontx.gov

Notice will be considered given and completed upon deposit of the notice in a United States Postal Service receptacle. Either Party may change its designated address for notice purposes upon ten (10) days' prior written notice to the other Party.

ARTICLE XIV **Default and Remedies**

14.1 The occurrence of any one or more of the following circumstances shall constitute a default ("Default") under this Agreement:

- a) Failure of the District to perform or observe any of the obligations, covenants, agreements, or conditions required to be performed or observed under this Agreement;
- b) Any representation or warranty of the District contained in this Agreement or in any certificate or instrument executed by the District in connection with or pursuant to this Agreement is found to be false or misleading in any material respect;
- c) The District dissolves, liquidates, or merges with or is consolidated into any other entity without the written approval of the Director;
- d) HUD makes an audit finding or exception that relates to the Project or the funds provided under this Agreement, which results in a termination of funding; or
- e) Failure of the City to pay the District for eligible expenses legally incurred under this Agreement.

14.2 Upon the occurrence of any of the foregoing events of Default, the Director or the District's Executive Director shall have the right to terminate this Agreement on twenty

(20) days' written notice to the other Party, provided, that such termination shall be ineffective if within the twenty (20) day period the defaulting Party cures the Default to the satisfaction of the terminating Party. The terminating Party, at its sole discretion, may extend the period to cure for a reasonable time if the defaulting Party has initiated action to cure the Default within the twenty (20) day period.

14.3 In the event that the occurrence of any of the above mentioned Defaults results in a demand by HUD for the City to repay sums disbursed under this Agreement, the District and City will work together to show HUD that the sums were spent in compliance with this Agreement. The rights and remedies contained in this Agreement shall not be exclusive but shall be cumulative of all rights and remedies now or hereafter existing whether by statute, at law, or in equity.

ARTICLE XV

Independent Contractor

15.1 In performing the obligations under this Agreement, the District shall act as an independent entity solely for its own account and not as an agent, representative or employee of the City.

15.2 No employee, agent, or representative of either Party shall be considered an employee of the other Party nor be eligible for any benefits, rights or privileges accorded to the other Party's employees.

ARTICLE XVI

Parties in Interest

This Agreement shall not bestow any rights upon any third party, but rather shall bind and benefit the City and the District only. Neither the United States Government nor HUD is a Party to this Agreement.

ARTICLE XVII

Non-Waiver

Failure of either Party to insist on the strict performance of any of the covenants herein or to exercise any rights or remedies available hereunder upon Default shall not be considered a waiver of the right to insist on and to enforce strict compliance with any other covenant or obligation hereunder or to exercise any right or remedy for any past or future Default.

ARTICLE XVIII

Applicable Law

This Agreement is subject to all laws, and all rules of the United States of America, the State of Texas, and the City Charter and Ordinances of the City of Houston and all rules and regulations of any regulatory body or officer having jurisdiction and in particular, without limitation, the federal regulations codified at 24 CFR Part 570, Federal Register Notices June 9, 2016, June 17, 2016, and August 7, 2017, and other laws and regulations that govern the CDBG-DR15 Flood Events Voluntary Program, the administration of which is the subject of this Agreement.

ARTICLE XIX**Agreement and Amendment**

19.1 Any alterations, additions or deletions to terms which are required by changes in federal or state laws and regulations shall be automatically incorporated into this Agreement and shall take effect on the effective date of the law or regulation. Each Party must make the other Party aware of any new laws and regulations immediately upon that Party's receipt of notice of said change.

19.2 This Agreement may be amended by a written amendment that has been executed by the Parties and approved by the City Attorney and County Attorney, except increases in funding and material changes to the Agreement shall require a formal amendment that has been approved by City Council and Harris County Commissioners Court.

ARTICLE XX (Intentionally Omitted)**ARTICLE XXI****Drug Detection and Deterrence**

The District represents that it is a special purpose district created by the Texas Legislature which will provide services under this Agreement at no cost or reduced cost to the public and is, therefore, exempt from the requirements of Executive Order 1-31, as revised, and effective March 1, 1995, titled "Mayor's Drug Detection and Deterrence Procedures for Owners."

ARTICLE XXII**Program Income**

22.1 No Program Income shall be generated under this Agreement.

22.2 Upon the expiration of this Agreement, the District shall transfer back to the City any unspent CDBG-DR15 funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-DR15 funds that came to the District by way of this Agreement.

ARTICLE XXIII**National Objective**

23.1 District agrees that the Project involving real property under its control that was acquired or improved in whole or in part with CDBG-DR15 funds in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) shall require compliance with Paragraph 23.2 below.

23.2 The Project involving real property must be used to meet the national objective established under this Agreement, pursuant to 24 CFR §570.208, Low-Mod Area Benefit, until five (5) years from the Closeout Date (See Article XXV, paragraph 25.5).

ARTICLE XXIV

Cooperation and Compliance

The Parties hereto agree to cooperate with each other and provide all necessary documentation, certificates and consents and to take all necessary action in order to satisfy the terms and conditions hereof and the applicable laws, regulations and agreements relating hereto.

ARTICLE XXV

Miscellaneous

25.1 Assignment and Successors. No Party to this Agreement will make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Party. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the Parties hereto, their successors and assigns and shall not bestow any rights upon any third party. This restriction does not pertain to project development and construction activities with affiliates, related entities and/or co-developers.

25.2 Approvals. Any approvals required from the Parties in connection with this Agreement shall not be unreasonably withheld, conditioned or delayed.

25.3 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such term or provision shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable term or provision had not been part of this Agreement.

25.4 Survival. All terms of this Agreement which according to the language therein indicate they will survive the execution of the Agreement, shall do so, for the length of time stated therein.

25.5 Closeout Date. The closeout date for this Voluntary Buyout Program shall be the date on which all of the following have occurred:

- a) All eligible costs under the CDBG-DR15 program have been paid by the City pursuant to this Agreement;
- b) The Work to be performed and paid with CDBG-DR15 funds under the Agreement has actually been completed;
- c) Other responsibilities of the District under the Agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance, and
- d) Audit Requirements set forth under 2 CFR Part 200, Subpart F have been met.

The closeout of this Voluntary Buyout Program shall be performed in compliance with 2 CFR §200.343 and other related close out provisions under 2 CFR Part 200.

25.6 Headings. The Section and Subsection titles hereof are inserted for convenience of reference only and in no way shall alter, modify or define, or be used in construing, the text of such Sections and Subsections.

25.7 Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties shall not have signed the same counterpart.

25.8 Further Assurances. Each Party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transactions contemplated by this Agreement including, but not limited to, the execution of the Relocation Assurance attached hereto under **EXHIBIT L. The resolution of any operational administrative costs or expenses not covered under the CDBG-DR15 Program, will be handled by the Party with the related duty or responsibility under the terms of this Agreement and Applicable Law.**

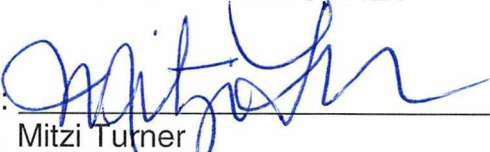
25.9 No Personal Liability; No Waiver of Immunity. Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement. The Parties agree that no provision of this Agreement extends either Party's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas. Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by either Party of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.

25.10 Transfer of Funds. Upon the expiration of this Agreement, the District shall transfer to the City any unspent CDBG-DR15 funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-DR15 funds under this Agreement.

IN WITNESS HEREOF, the City and the District have executed this Agreement in multiple originals, each of equal force effective on the date of countersignature of the City Controller.

APPROVED AS TO FORM:

VINCE RYAN
HARRIS COUNTY ATTORNEY

By: 
Mitzi Turner
Assistant County Attorney

HARRIS COUNTY FLOOD CONTROL
DISTRICT

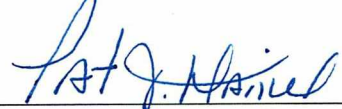
By: 
Lina Hidalgo
County Judge

CITY OF HOUSTON
("CITY")



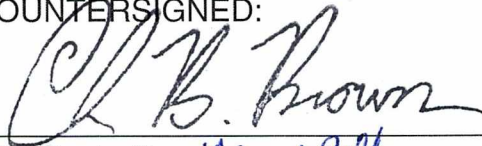
Mayor *Amanda Washington*
2-4-2020

ATTEST / SEAL:



City Secretary **Assistant**

COUNTERSIGNED:



City Controller *Genard Palk*

APPROVED AS TO FORM:

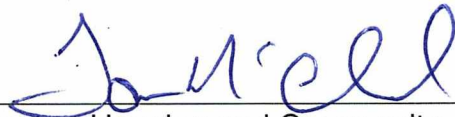


Senior Assistant City Attorney

DATE COUNTERSIGNED:

2-11-2020

APPROVED:



Director, Housing and Community
Development Department



EXHIBIT A

EXHIBIT A**PROJECT SUMMARY****Subrecipient, Project Title, Period of Contract
and Maximum Compensation**

- I. The Subrecipient is:

Harris County Flood Control District
9900 Northwest Freeway
Houston, TX 77092
- II. The project title is "CDBG-DR15 Flood Events Voluntary Housing Buyout Program"
- III. The project target neighborhoods will be located in:
Braeburn Glen
Glenburnie & Cashiola
Langwood
- IV. The Agreement period is five (5) years from the Countersignature date of the City Controller, as provided for in the foregoing Agreement, subject to the availability of federal funds.
- V. The maximum compensation for eligible activities under the Agreement is \$10,660,000.00 and is subject to the provisions, of the foregoing Agreement.
- VI. The Housing and Community Development Department of the City of Houston will have the primary responsibility for administering the Contract on behalf of the City.

EXHIBIT B

Scope of Work

Harris County Flood Control District (the District)

The District will perform voluntary property buyout services to eligible property owner applicants in certain neighborhoods of the City, including the purchase of structures in the floodplain, the demolition and/or removal of the structures, relocation of eligible households and maintain the use of property as open green space. In addition, relocation supplements are provided to owners and renters to assist in relocating them into comparable homes in a non-hazard-prone area (outside the floodplain). Purchasing these homes removes the threat to lives and property and reduces government expenditures associated with flood disasters.

Voluntary buyout areas are located in three neighborhoods:

- Braeburn Glen
- Glenburnie & Cashiola
- Langwood

The proposed project's accomplishments include:

- Relocating families to higher ground out of harm's way
- Eliminating future flood damages and health and safety risks for owners and rescuers
- Reducing repetitive subsidized flood insurance payments and federal disaster assistance
- Restoring floodplain to its natural and beneficial function for stormwater storage
- Creating open space with the potential for community amenities (i.e. detention, parks, gardens, playing fields, etc....)

All activities for which funding is requested will support the cost estimate for the purchase price of each property, closing cost, appraisal fee, demolition cost, moving and relocation supplements. The estimated purchase price is 1.2% of Harris County Appraisal District (HCAD) market value. Closing costs are estimated at 1.5% of the estimated purchase cost. Appraisal costs for single family residential properties are currently set for Harris County Real Property Division contracted appraisers at \$750 per property. Demolition costs are estimated at \$8,000 per property based on past historical average costs. Moving costs are estimated at \$2,500 per property based on past historical average costs. Supplement amounts are estimated for each property based on owner/tenant occupancy as identified within the ownership records of the Harris County Appraisal District. Tenant occupancy relocation supplement costs are estimated at \$7,200 per property. Owner occupancy relocation supplement costs are estimated at \$31,000 per property. Using Housing of Last Resort, owner occupants and tenant occupants will have one year to occupy a replacement dwelling under the voluntary property buyout program and an additional 6 months to file a claim(s) for reimbursement of eligible costs. Once an agreement for the replacement dwelling has been fully executed, payment will be issued. The costs identified above are estimates and reimbursements will be based upon actual costs; any additional costs that are found to be non-reimbursable under this Project will be jointly addressed by the City and District. The District will cover the normal, day-to-day administrative costs of their buyout program.

EXHIBIT C

CDBG-DR15 Flood Events Voluntary Housing Buyout Program**Budget**

HOUSING BUYOUT PROGRAM BUDGET ESTIMATE	
Purchase Price/Acquisition Costs	\$ 8,573,360.40
Closing Costs	\$ 128,600.41
Appraisal Fees	\$ 42,750.00
Demolition Costs	\$ 456,000.00
Relocation Costs/Supplement	\$ 1,316,789.19
Moving Expenses	\$ 142,500.00
Total	\$ 10,660,000.00

EXHIBIT D

FEDERAL CONTRACT REQUIREMENTS

All references to "Contractor" in this Exhibit shall apply to the District, also referred to as "Subrecipient", and any contractor, or subcontractor performing work on behalf of the Contractor pursuant to the foregoing Agreement/Contract, as applicable. The following Federal Contract Requirements will generally apply to all Contractors. Also see 2 CFR Part 200; applicable federal program requirements at 24 CFR Part 570 (CDBG), 24 CFR Part 92 (HOME), 24 CFR Part 574 (HOPWA), 24 CFR Part 576 (Emergency Solutions Grant); and applicable laws, rules and regulations relating to other programs administered by the U.S. Department of Housing and Urban Development ("HUD").

SECTION 1

Public Law 88-352 and Public Law 90-284; Affirmatively Furthering Fair Housing; Executive Order 11063

A. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352 42 U.S.C. §2000d et seq.) ("Title VI") and with Title 24 Code of Federal Regulations (CFR) Part 1, which implements Title VI. In accordance with Title VI, no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

B. The Contractor shall comply with Public Law 90-284, which refers to Title VII of the Civil Rights Act of 1968, also known as the Fair Housing Act (42 U.S.C. §3601 et seq.), which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale of rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex or national origin. In accordance with the Fair Housing Act, the Secretary of HUD requires that grantees administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's AFH conducted in accordance with the requirements of 24 CFR §§5.150 - 5.180 and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

C. Executive Order 11063, as amended by Executive Order 12259 (3 CFR §§1959-1963 Com., p. 652; 3 CFR §1980 Comp., p 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR Part 107, as applicable.

SECTION 2

Non-Discrimination in Programs and Activities

The Contractor shall comply with the Age Discrimination Act of 1975 and implementing federal regulations, **42 U.S.C. §6101 et seq.**, issued pursuant to the Act. Any prohibition against discrimination on the basis of age under the Age Discrimination Act, or with respect to an otherwise qualified handicapped individual as provided in Chapter 126 of Title 42 and chapter 5 of Title 47 shall also apply to any such program or activity. (Also see 29 U.S.C.A. §794)

SECTION 3

National Flood Insurance Program

A. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.

B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.

SECTION 4

Displacement, Relocation, Acquisition and Replacement of Housing

Contractor understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655), as applicable; and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.

SECTION 5
Employment and Contracting Opportunities

A. Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity)

The Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion sex, or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor set forth at 41 CFR Part 60.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation,

or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.

(7) The Contractor will include provisions similar to paragraph 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon subcontractors or vendors. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Section 3 Of The Housing And Urban Development Act Of 1968

(1) The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 CFR Part 135 apply to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.

(2) The Contractor will comply with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement. The Contractor certifies and agrees that there is no contractual or other disability which would prevent compliance with these requirements.

(3) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(4) The Contractor will include or have included a Section 3 clause in every subcontract for work in connection with the project. The Contractor shall, at the direction of the City, take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of this Section 3 clause. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135. The Contractor shall not let any subcontract unless the subcontractor has provided the Contractor with a preliminary statement of ability to comply with the requirements of this Section 3 clause.

(5) Compliance with the provisions of Section 3, and all applicable rules and orders

of HUD issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the project. These provisions are binding upon the City, its contractors and subcontractors, their successors and assigns. Failure to fulfill these requirements shall subject the City, its contractors and subcontractors, their successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided.

(6) The Contractor shall have completed, signed and delivered a Voluntary Compliance Form (provided by the City) to the Director prior to the execution of this Agreement.

SECTION 6

Lead-Based Paint Poisoning Prevention Act

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and the implementing regulations at 24 CFR Part 35, Subparts A, B, J, K and R may apply to activities under the Agreement.

SECTION 7

Use Of Debarred, Suspended, Or Ineligible Contractors or Subrecipients

(a) The Contractor shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 5 or under the authority of the City.

(b) The Contractor shall not use federal funds for any contract for the construction, alteration or repair of the project funded under this Agreement with any contractor or subcontractor listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

SECTION 8

Uniform Administrative Requirements, Cost Principles and Audit Requirements

The Contractor shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 CFR Part 200, as applicable.

SECTION 9

Conflict Of Interest

A. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 CFR Part 200, Subpart B - General Provisions, shall apply.

B. In all cases not governed by 2 CFR Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).

- (i) No persons described in paragraph (ii) (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.
- (ii) The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or subrecipient which receives funds under the federal grant.

SECTION 10

Eligibility for Aliens Not Lawfully Present in U.S.

Contractor understands that aliens not lawfully present in the U.S., as described in 49 CFR §24.208, are not eligible to apply for benefits under certain federal activities.

SECTION 11

Compliance With Clean Air And Water Acts

This Agreement may be subject to the requirements of the Clean Air Act, as amended (42 U.S.C. §§7401-7671q), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§1251-1387) and the regulations issued under the Clean Air Act and the Federal Water Pollution Control Act and by the Environmental Protection Agency. In compliance with, the regulations, Contractor agrees that:

A. No facility to be utilized in the project or program is on the list of Violating Facilities issued by the U.S. Environmental Protection Agency (EPA) pursuant to **40 CFR §15.20**.

B. The Contractor will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, (42 U.S.C. §§7401-7671q), and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§1251-1387).

C. As a condition for the award of this Agreement, the Contractor shall give prompt notice to the City of any notification of violations received from the Office of Federal Activities or the EPA, indicating that a facility utilized or to be utilized is under consideration to be listed on the EPA List of Violating Facilities.

D. The Contractor will include or cause to be included the requirements contained in paragraphs A through C of this clause in every lower-tier nonexempt contract and will take such action as the City may direct as a means of enforcing such provisions.

E. In no event shall any amount of the funds provided under the Agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

F. Contractors who receive subcontracts/subgrants of amounts in excess of \$150,000 are required to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§1251-1387).

G. Any violations of this Section 12 must be reported to the Federal awarding agency, the Regional Office of the Environmental Protection Agency (EPA), and the City.

SECTION 12

Architectural Barriers Act

The Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR §40.2 or the definition of "building" as defined in 41 CFR §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Part 101-19, Subpart 101.19.6, for general type buildings).

SECTION 13

The Americans with Disabilities Act

The Americans with Disabilities Act, also referred to as the ADA (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218 and 225), provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 25, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplishable and able to be carried out

without much difficulty or expense.

SECTION 14

Records For Audit Purposes

Without limitation to any other provision of the foregoing Agreement/Contract the Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient pursuant to 2 CFR §200.333. The Contractor shall maintain records required by **24 CFR §135.92** for the period required under 2 CFR §200.333. The Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained **under 2 CFR §200.336**.

SECTION 15

Audit Requirements

A. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review and audit as described hereinabove at Section 17. Contractor further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 CFR Part 200, Subpart F - Audit Requirements.

B. Single Audit - Single Audit - Contractor further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 CFR Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 CFR Part 200, Subpart F - Audit Requirements. Once the Contract is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

SECTION 16

Additional Federal Requirements Under 2 CFR PART 200, Appendix II, As Applicable

(A) **Simplified Acquisition Threshold.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. §1908, as may be amended from time to time, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) **Contract Minimum for Termination for Cause and Convenience.** All contracts in

excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) **Davis Bacon Act, as amended (40 U.S.C. §§3141–3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(D) **Copeland Anti-Kick Back Act.** Contracts must also include a provision for compliance with the Copeland “Antikickback” Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) **Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701–3708).** Where applicable, all contracts awarded by the nonfederal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §3702 and §3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. §3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. §3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) **Energy Policy and Conservation Act.** Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

(G) **Byrd Anti-Lobbying Amendment (31 U.S.C. §1352).** Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. §1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(H) **Procurement of Recovered Materials.** See 2 CFR §200.322.

EXHIBIT E

CITY OF HOUSTON'S CODE OF ORDINANCE ARTICLE V. MINORITY, WOMEN, AND SMALL BUSINESS ENTERPRISES

Sec. 15-81. - Declaration of policy.

- (a) It is the policy of the city to stimulate the growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting, as set forth in this article. The purposes and objectives of this article are:
 - (1) To promote equal opportunity for participation amongst local minority, women and small business enterprises in all phases of city contracting;
 - (2) To increase the utilization of such local firms in providing certain goods and services;
 - (3) To provide opportunities to broaden and enhance local firms' ranges of capacities; and
 - (4) To increase opportunities for such local firms to serve as contractors, in addition to acting as subcontractors to others, where applicable, in an effort to remedy discriminatory practices and eliminate statistical disparities in city contracting.
- (b) This article is intended to be remedial in nature and to continue only until its purposes and objectives are achieved. At least every five years the city shall make its best efforts to initiate a review of its minority and women business enterprise program, the results of which shall be provided to city council, who shall determine, upon its receipt of recommendations and the consideration of other relevant information from the OBO director, whether there is strong statistical and anecdotal evidence of discrimination against minority and women business enterprises in city contracting warranting the continuation of a race and gender conscious minority and women business enterprise program.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-82. - Definitions.

The following words and phrases, when used in this article and in article VI of this chapter, shall have the meanings provided in this section, unless the context clearly indicates another meaning. For the purpose of these definitions, the singular shall also include the plural, and the plural shall also include the singular.

Bidder means any person or legal entity which submits a bid or proposal to provide labor, goods or services to the city by contract for profit.

Commercially useful function means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWSBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE is responsible. In determining whether a MWSBE is performing a commercially useful function, factors including but not limited to the following shall be considered: (1) whether it has the skill and expertise to perform the work for which it is being utilized and possesses all the necessary licenses; (2) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and (3) whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract. MWSBEs shall be responsible for performing more than fifty percent of the task or group of tasks being counted toward the applicable participation goal unless subcontracting such task or group of tasks in excess of fifty percent has been expressly authorized via a waiver by the OBO director.

Contractor means any person or legal entity providing goods, labor, or services to the city by contract for profit.

Established business enterprise means a MWSBE or any business applying for certification as a MWSBE that, by virtue of its size meets or exceeds the standards promulgated by the U.S. Small Business

Administration for that category of business, as determined by the procedures described in section 15-87(a) of this Code.

Goal-oriented contract means any contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000.00 and for the supply of goods or nonpersonal or nonprofessional services in excess of \$100,000.00:

- a. For which competitive bids are required by law;
- b. Which is not within the scope of the disadvantaged business enterprise programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the initiating city department, in consultation with the OBO director, determines has significant subcontracting potential in fields in which there are adequate numbers of known MWSBEs to compete for and perform the subcontract service(s).

Good faith efforts shall refer to steps taken to achieve a MWSBE goal or other requirements which, by their scope, intensity and usefulness demonstrate a bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract and a contractor's responsibility to put forth measures to meet or exceed a MWSBE goal throughout the duration of the contract.

Joint venture means an association of a MWSBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MWSBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Local firm, local MWSBE, or locally based when describing a firm or entity seeking certification means a sole proprietorship, partnership, corporation or any other business entity with a significant business presence in the Houston-Sugar Land-Baytown metropolitan statistical area, as defined by the Office of Management and Budget within the Executive Office of the President of the United States. A significant business presence includes the requirement that a MWSBE have an established place of business in the Houston-Sugar Land-Baytown metropolitan statistical area at which one or more of its employees is regularly based and that such place of business has a substantial role in the MWSBE's performance of a commercially useful function.

MWSBE means, collectively, MBEs, WBEs, and SBEs.

Minority business enterprise or MBE means a business which is:

- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women and such minority person; or
- f. A business which has been certified as an MBE by the office of business opportunity under any other recognized MBE program.

Minority person means a citizen or legal resident alien of the United States who is:

- a. Black American, which includes persons having origins in any of the black racial groups of Africa;
- b. Hispanic American, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

- c. Asian-Pacific American, which includes persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, the Federated States of Micronesia, or Hong Kong, or the region generally known as the Far East;
- d. Native American, which includes persons having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut, Native Hawaiian; or
- e. Subcontinent Asian American, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

Owned, controlled and managed means that the one or more minority persons or women who own the requisite interests in or assets of a business applying for minority or women business enterprise certification possesses equivalent incidents of such ownership, including an equivalent interest in profit and loss, and has contributed an equivalent percentage of capital and equipment to the business. Contributions of capital and equipment must be real and substantial. In instances where expertise is relied upon to demonstrate ownership, control, and management, it must be shown that the expertise is: (1) in a specialized field; (2) in an area critical to the firm's operation and performance of a commercially useful function; (3) critical to the firm's continued success; and (4) documented in the records of the firm, including but not limited to documentation showing the particular expertise and its value to the firm. Additionally, the individual whose expertise is relied upon must have a significant financial investment in the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse). The one or more minority person or woman owners shall have recognized, ultimate control over all day-to-day business decisions affecting the MBE or WBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

Regulated contract means any contract, agreement or other undertaking:

- a. For which competitive bids are not required by law;
- b. That is not covered by the MBE/WBE programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the recommending city department has determined, in consultation with the director of the office of business opportunity either:
 - 1. Has significant subcontracting potential in fields in which there are sufficient known MWSBES to perform the particular subcontract service(s); or
 - 2. Is of a type for which there are sufficient known MWSBES which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.

Small business enterprise or SBE means a firm whose gross revenues or number of employees, averaged over the past three years, inclusive of any affiliates as defined by 13 CFR Section 121.103, does not exceed the size standards defined in Section 3 of the Federal Small Business Act and applicable Small Business Administration regulations related to the size standards found in 13 CFR Part 121. The term shall also include a certified minority/women business enterprise defined in this Code.

Subcontractor means any business providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City of Houston.

Woman means a person who is a citizen or legal resident alien of the United States and who is of the female gender.

Women business enterprise or WBE means a business which is:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more women; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or
- f. A business which has been certified as a WBE by the office of business opportunity under any other recognized WBE program.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013; eff. 7-1-2013)

Sec. 15-83. - Program elements.

- (a) Based upon a review of annual awards and purchases by affected city departments, the office of business opportunity shall each year submit a progress report to the city council. The report shall include two percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in:

- (1) The supply of goods and nonpersonal or nonprofessional services; and
- (2) The performance of personal or professional services;

to the prior year's total local business community utilization and availability to do business in each of the two named fields of city contracting.

In addition, the report shall include percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in construction to the prior year's total local business community utilization and availability to do business in city construction contracting. The report may also include figures and other evidence of factors prescribed in Part 26, Title 49 of the Code of Federal Regulations in the year the report is made that may affect the aforementioned ratio of utilization and availability.

- (b) Based upon the measured utilization and availability and any other relevant factors prescribed in Part 26, Title 49 of the Code of Federal Regulations and identified in the report submitted pursuant to subsection (a) above, city council shall from time to time set annual city-wide percentage goals for city contracting with MWSBEs in each of the two named categories described in subsection (a)(1) and (2) above and for contracting with MWSBEs in the construction category. The adjustment, if any, in the percentage goals shall be made during the first quarter of the fiscal year.
- (c) It is the responsibility of each city department to determine which contracts initiated by it are goal-oriented contracts and which are regulated contracts. If the determination is made that a contract is a goal-oriented contract or a regulated contract, the initiating department shall review the contract and shall determine, by reference to the MWSBE register, the number of certified MWSBEs in each of the two named categories described in subsection (a)(1) and (2), above, and for construction, the number of certified MWSBEs in the construction category. The initiating department director or his or her designee shall determine whether the contract is one to which MWSBE provisions should be applied.

- (1) These provisions are not required to be applied in the following circumstances:

- a. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy;
- b. The service or goods requested are of such a specialized, technical or unique nature as to require the city department to be able to select its contractor without application of MWSBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants);
- c. If application of MWSBE provisions would impose an unwarranted economic burden or risk on the city or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the city; or
- d. If the possible MWSBE participation level based on MWSBE availability would produce negligible MWSBE participation.

If one of the above-listed conditions is determined to exist, the department director shall certify that determination in writing prior to the award of the contract, specifying the conditions which lead to the determination, and submit the determination to the OBO director for review and approval.

- (2) If the contract does not fall within one of the above-listed exceptions, based upon its overall review, the initiating department shall assign an appropriate MWSBE participation level, if any, for the contract (whether goal-oriented or regulated) considering the local availability of certified MWSBEs in the contract field.

The intention of this article is to provide administrative flexibility in the application of MWSBE provisions of this Code and in the percentage participation level on a contract-by-contract basis so as not to limit access to city contracting by nonminority-owned, nonwomen-owned or established business enterprises to a greater degree than necessary to meet the city-wide annual goal and the policies and objectives of this article.

- (d) The bidding documents and the contract documents for goal-oriented contracts for which a MWSBE participation level has been established shall contain a provision detailing the purposes and objectives of the city's MWSBE ordinance and shall incorporate by reference this article and the then-current motion or ordinance establishing MWSBE annual goals. Regulated contracts which are determined to have significant subcontracting potential for which a MWSBE participation level has been established shall contain contractual provisions (and proposal provisions if submitted for proposals or for bids) requiring the contractor to meet or exceed the determined MWSBE participation level for that contract, or to establish that it has made good-faith efforts to do so, and that notwithstanding such efforts, was unable to meet or exceed the determined participation levels. The OBO director shall establish procedures defining good-faith efforts. These procedures will be reviewed and approved by the mayor and the city attorney.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-84. - Office of business opportunity.

- (a) Applications for certification as a MWSBE and any addenda thereto shall be made on a form promulgated by the OBO director, and the requirements for certification shall be consistent with the applicable requirements set forth in subsection (b) below.
- (b) The office of business opportunity has responsibility for:
 - (1) Establishing procedures for the implementation of this article, and reviewing and approving procedures established by city departments, such procedures to be narrowly designed to attain the purposes and objectives specified herein without unduly limiting nonminority-owned or nonwoman-owned or established business enterprises. Such procedures shall be reviewed and approved by the mayor and by the city attorney prior to implementation;
 - (2) Certifying businesses as minority, small or women business enterprises and maintaining and distributing to affected city departments a current register, updated monthly, of such business (including a separate listing of such businesses whose applications for certification are pending) specifying the categories of city contracting represented by the certified MWSBEs;

- (3) Developing educational programs for and otherwise assisting (without offering favoritism in relation to the competitive bidding system) MWSBEs to compete effectively for city contracts;
- (4) Making recommendations to the mayor, city council and city departments to further the policies and objectives of this article, including but not limited to assisting city departments in setting contract-specific MWSBE goals;
- (5) Reviewing documentation from potential contractors and from contractors concerning good-faith efforts made to meet or exceed the participation level for contracts. The final recommendation to city council for award or for acceptance of work shall be the city department's, although the office of business opportunity may take exception;
- (6) Compiling a report of the progress of city departments, by department, in attaining the city-wide goals set by city council. This report shall be based upon MWSBE contractor and subcontractor information, to be specified by the office of business opportunity. Upon completion, the report is to be submitted quarterly to city council members, the mayor and all affected city department directors for their information;
- (7) Receiving and reviewing complaints and suggestions concerning the MWSBE program from contractors, MWSBEs and city departments; and
- (8) Without limiting the authority of the office of business opportunity to establish procedures that are consistent with the terms of this article, the office of business opportunity is specifically directed to promulgate and implement procedures as follows:
 - a. Grievance procedures for any person aggrieved by any decision of the office of business opportunity under this article. The procedures shall include notice and a hearing before an impartial hearing officer who shall be appointed by the mayor;
 - b. Mediation procedures for the resolution of disputes between contractors or bidders and MWSBE participants or potential participants with respect to any aspect of compliance with this article, including, without limitation, any assertion that a contractor, subcontractor, or MWSBE has failed to make good faith efforts to comply with this article;
 - c. Procedures to implement and enforce any sanctions provided under this article;
 - d. Procedures to ensure performance of work by MWSBEs, which procedures shall include: (i) a requirement that no more than 50 percent of their work may be subcontracted, without a specific waiver from the office of business opportunity for cause; (ii) a requirement that the minority person, small business or woman owner of a MWSBE have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified; (iii) a requirement that bidders and contractors make good faith efforts to meet or exceed contract MWSBE goals; and (iv) a requirement that MWSBEs accurately represent all material information required for certification and truly perform a commercially useful function;
 - e. Procedures for counting participation by MWSBEs as prime contractors, subcontractors, suppliers and joint venturers on city contracts, which procedures shall ensure that all work performed by MWSBEs is included in the computation of the progress made toward meeting the annual city-wide goals;
 - f. Procedures to ensure that this article is limited in its application to the certification of locally based MWSBEs;
 - g. Procedures to coordinate the operation of this article with other local MWSBE programs, which may include reliance upon certification procedures of other entities that are determined to be reliable and equivalent to this article;
 - h. Procedures to ensure access to necessary records of prime contractors and subcontractors on city contracts; and
 - i. Procedures for handling theft of services (wage theft) complaints of employees of city contractors and subcontractors.

- (c) MWSBE certification shall be valid for a period of three years from the date of certification; provided, however, all applicants certified as MWSBEs shall be subject to review on an annual basis pursuant to procedures established by the OBO director to ensure compliance with all applicable provisions of this article.
- (d) Applications for renewal of MWSBE certification shall be evaluated under the same criteria and subject to the same manner of review as original applications.
- (e) All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures hereunder shall be maintained in the office of business opportunity for inspection, and copies may be purchased at the fees prescribed by law.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-84.1. - Responsibilities of city departments; department utilization plan.

- (a) Each department director shall be accountable for the oversight and implementation of the following activities:
 - (1) Informing MWSBE organizations or associations of the department's procurement procedures and future procurement opportunities;
 - (2) Ensuring that department bid solicitations and requests for proposals are sent to MWSBEs in a timely manner;
 - (3) Referring MWSBEs to technical assistance services available from the office of business opportunity and other organizations that provide such services;
 - (4) Reviewing each request for waiver or modification of participation goals prior to its submission to the office of business opportunity for approval;
 - (5) Monitoring the department's procurement activities to ensure compliance with and progress towards the city-wide participation goals; and
 - (6) Providing the OBO director with the departmental utilization plan prescribed in subsection (b) of this section and any other documentation requested by the office of business opportunity necessary in evaluating a department's progress in achieving city-wide participation goals.
- (b) Each department that has procured goods and services in excess of three million dollars during the fiscal year ending on June 30th of the preceding calendar year shall be required to submit a departmental utilization plan for the following fiscal year commencing on July 1st. Departmental utilization plans shall be submitted on or before June 15, 2014, and not later than June 15th of each calendar year thereafter.
- (c) Each department director shall be responsible for creating, submitting, and implementing an annual departmental utilization plan that shall include, at a minimum, the following:
 - (1) The department's forecast of anticipated projects and contract specific goals for the upcoming fiscal year;
 - (2) A detailed, written explanation for any departmental goal that is not consistent with the overall city-wide goals for MWSBE participation;
 - (3) A list of the names and titles of department personnel responsible for the implementation of the departmental utilization plan;
 - (4) The methods and relevant activities proposed for achieving the department's participation goals; and
 - (5) Any other information the department director deems relevant or necessary.
- (d) Upon review by the OBO director, all departmental utilization plans shall be submitted to the mayor and city council for final approval.
- (e) A departmental utilization plan may be amended to reflect changes in the department's projected procurements, expenditures, or other relevant circumstances and resulting changes in the department's participation goals. Such amendments shall be submitted to the OBO director for review and shall be submitted to city council for final approval not less than 30 days prior to the proposed date of implementation.

- (f) Each department director shall be accountable for setting and making reasonable efforts to meet the participation goals stated its departmental utilization plan. Departments shall, at minimum, engage in outreach activities that encourage eligible businesses to apply for certification as MWSBEs and encourage MWSBEs to participate in all facets of the procurement process and compete for city contracts, including contracts awarded by negotiated acquisition and emergency and sole source contracts.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-85. - Filing of plan.

Before execution of any contract or issuance of any purchase order for which a MWSBE goal has been established, a bidder or potential contractor shall submit a plan setting forth how it intends to meet the contract MWSBE goal or documentation demonstrating its proof of good faith efforts to meet the contract MWSBE goal. After execution of a contract or receipt of a purchase order, the contractor shall comply with the submitted plan, unless it has received approval from the OBO director for a deviation therefrom. Approval shall not be unreasonably withheld. While it is not a requirement that a contractor meet its goal, it is required that the contractor objectively demonstrate to the office of business opportunity that it has made good faith efforts to meet the goal. To this end, the contractor shall maintain records as prescribed by the office of business opportunity demonstrating its efforts at compliance. The contractor shall be required to submit to the office of business opportunity reports of its efforts under this article in such form or manner as shall be prescribed by the OBO director.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-86. - Sanctions.

- (a) The OBO director is authorized to suspend any contractor who has failed to make good faith efforts to meet any goal established under this article from engaging in any contract with the city for a period up to, but not to exceed, five years. The OBO director is also authorized to suspend any MWSBE who has failed to make good faith efforts to meet all requirements necessary for participation as a MWSBE from engaging in any contract affected by this article for a period up to, but not to exceed, five years.
- (b) In accordance with section 15-84 of this Code, the office of business opportunity shall establish procedures for the imposition of sanctions and shall ensure that no sanction is imposed without notice of the grounds being given and an opportunity for a hearing consistent with the procedures set forth in sections 15-22, 15-23, and 15-24 of this Code. Any procedure established shall be consistent with state law.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-87. - Determination of established business enterprise status.

- (a) Based upon a review of data submitted by MWSBEs or MWSBE applicants and any other information available from its files or the files of any other governmental entity, the office of business opportunity shall determine the size of each MWSBE or MWSBE applicant by determining the average of the gross receipts for the prior three years and the average number of employees for the 12 calendar months immediately preceding the review, as applicable. The calculation of size shall be based solely upon the size standards and methods of calculation identified by the U.S. Small Business Administration (SBA) including, without limitation those set forth in 13 C.F.R. part 121, subpart A, secs. 121.101 through 121.107, and sec. 121.201, any amendment or successor thereto, or any other document defining such size standards or the calculation thereof that has been fully and finally adopted by the SBA. The review shall be applicable to business entities applying for initial certification as a MWSBE or to certified MWSBEs, provided that such review may not be initiated until the applicant or certified MWSBE has established a business history of sufficient length to allow calculation of size based on the three year financial or 12 month employee data, as applicable.
- (b) Following the review described in this section, each certified MWSBE or MWSBE applicant shall be re-evaluated under this section on an annual basis based upon the size standards and methods of calculation

identified by the SBA and procedures established by the OBO director to ensure compliance with all applicable provisions of this article.

- (c) All MWSBEs and MWSBE applicants shall, upon written request of the OBO director, provide to the office of business opportunity copies of any and all documents, including without limitation financial statements and tax records, requested by the director in connection with the review authorized in subsection (a) of this section, not later than 20 business days following the date of mailing of the request. Failure to timely and completely comply with any such request will authorize the imposition of sanctions under section 15-86 of this Code, or denial of certification in the case of a MWSBE applicant.
- (d) Following the review authorized by subsection (a) of this section, the office of business opportunity shall classify each MWSBE or MWSBE applicant whose size meets or exceeds the size standard identified by the SBA for that class of enterprise as an established business enterprise. The classification shall be effective as of the date of mailing of the notice provided in section 15-88 of this Code.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-88. - Notice, appeal and waiver.

- (a) Immediately upon classification of a certified MWSBE or MWSBE applicant as an established business enterprise pursuant to section 15-87 of this Code, the office of business opportunity shall notify the business so classified of the action by United States certified mail, return receipt requested, addressed to the last known address of the business and deemed given when placed in a United States mail depository.
- (b) Each notice shall inform the affected MWSBE or MWSBE applicant of the following matters: (1) That the MWSBE or MWSBE applicant has been classified as an established business enterprise;
- (2) That the classification is effective as of the date of mailing of the notice;
- (3) That the MWSBE or MWSBE applicant may appeal the classification or seek a waiver of the classification pursuant to the procedures established under this section;
- (4) That the provisions of section 15-89 of this chapter shall become enforceable with respect to any certified MWSBE one year following the notice of classification, unless the decision is reversed or a waiver is granted and the classification is withdrawn prior to the expiration of the one-year period; and
- (5) That any MWSBE applicant deemed ineligible for certification based upon its classification as an established business enterprise shall remain ineligible for certification unless and until any withdrawal of the classification as an established business enterprise is granted pursuant to an appeal or a request for waiver conducted under this section.
- (c) In order to appeal a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written notice of appeal no later than 60 days following the date of mailing of the notice of classification. The sole basis for an appeal shall be that the office of business opportunity has incorrectly calculated the size of the business according to SBA standards based upon incorrect information or error in computation. The notice of appeal shall be accompanied by any documentation necessary to demonstrate the asserted error. If the OBO director finds that an error or errors were made in calculating the size of the business and that any such error resulted in an incorrect classification as an established business enterprise, the classification shall be withdrawn and the business promptly notified of the withdrawal. If the OBO director finds that no error was made, or that any error would not materially alter the classification, he shall notify the business that the classification is not altered, by certified mail, return receipt requested. The business may within ten days of the date of mailing of the notice submit to the OBO director a written request for a hearing, which hearing shall be conducted under the procedures set forth in subsections (e) through (g) of this section.
- (d) In order to seek a waiver of a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written request for a hearing no later than 60 days following the date of mailing of the notice of classification. The written request shall include documentary evidence, including but not limited to financial statements and tax records, relevant to the following criteria:

- (1) Profitability of the enterprise;
 - (2) Sales of the enterprise, including a demonstration that 55 percent or more of the enterprise's sales, within the period utilized by the office of business opportunity in its classification determination, are not related to city contracts;
 - (3) Ability of the MWSBE or MWSBE applicant to obtain bonding, if the enterprise acts as a prime contractor or in a category in which obtaining bonding is required; and
 - (4) Positive comparison of the enterprise's business and financial profile with those of non-MWSBE firms in the same business category based on an objective industry standard.
- (e) The OBO director shall notify the affected MWSBE or MWSBE applicant of the place and time of a hearing before the OBO director or his designee to consider an appeal requested under subsection (c) of this section, or a request for waiver of the classification under subsection (d) of this section, or both, as applicable, by United States certified mail, return receipt requested. The hearing shall be set not later than 30 days following receipt of the request, provided that the OBO director or his designee may in his discretion extend such date by a reasonable period for good and sufficient cause shown. Hearings for businesses that have both appealed under subsection (c) of this section and requested a waiver under subsection (d) of this section may be consolidated in a single hearing at the discretion of the OBO director or his designee.
 - (f) The OBO director shall promulgate written procedures for the conduct of hearings. The OBO director or his designee shall hear each appeal or request for waiver and shall consider only the criteria set forth under subsections (c) and (d)(1) through (d)(4) of this section, as applicable, in determining whether to withdraw the classification of the affected business as an established business enterprise. The OBO director shall develop objective standards for evaluating each factor set forth under subsections (d)(1) through (d)(4) based upon recognized industry or governmental practices or standards. The burden shall be on the business to demonstrate by clear, convincing and cogent evidence either that a material error in classification was made or that the granting of a waiver is justified by at least two of the criteria set forth in subsections (d)(1) through (d)(4) of this section.
 - (g) Notwithstanding any provision of this Code or of the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, the decision of the OBO director or his designee regarding appeal or waiver shall be final.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-89. - Effect of classification; re-application.

- (a) Upon the expiration of one year following the notice of classification as an established business enterprise referenced in section 15-88(a) of this Code, and in the absence of any withdrawal of such classification by the OBO director, each certified MWSBE so classified shall be ineligible for future participation in any city contract as a MWSBE and its certification shall be withdrawn. No application for re-certification shall be granted absent the prior determination of the OBO director that the applicant does not meet or exceed the SBA size standards referenced in section 15-87(a) of this Code. Certified businesses whose evaluation results in classification as an established business enterprise shall timely file any re-certification application due prior to expiration of the one year extension of program eligibility referenced in this section, but the application shall not be granted unless and until the classification is withdrawn or waived.
- (b) Notwithstanding any provision of this Code or the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, any initial applicant for MWSBE certification who meets the criteria for an established business enterprise at the time of its application and is so classified shall be denied certification on that basis alone and shall have no recourse for the denial except through challenging the classification in the manner set forth in section 15-88 of this chapter. Any and all other matters pertaining to the eligibility of the applicant shall be abated and shall only be reinstated if the classification as an established business enterprise is withdrawn.
- (c) The office of business opportunity may continue to assist established business enterprises following ineligibility as follows:

- (1) Such businesses, if formerly certified by the city, may continue to be listed in any listing of MWSBE firms in a separate category of established MWSBE firms for the information of other private or public entities; and
- (2) Such businesses, if formerly certified by the city, may receive information, counseling and referrals to other agencies supporting business enterprises from the office of business opportunity after their classification as established business enterprises.
- (d) No sooner than one year following the date of program ineligibility provided in subsection (a) of this section or the denial of certification provided in subsection (b) of this section, any established business enterprise may apply for reinstatement as a fully eligible, certified MWSBE or reinstatement of an application for certification abated under subsection (b) of this section, as applicable, upon demonstrating the existence of one or more of the following conditions:
 - (1) That the subsequent history from the date of initial classification as an established business enterprise demonstrates that a size calculation as of the date of application for reinstatement would place the business below the SBA size standards for that category of business;
 - (2) That the established business enterprise has successfully obtained an SBA size determination from a federal agency authorized to make such a determination, or has prevailed in an SBA size protest under 13 CFR § 121.1001, et seq., as amended, including any judicial review thereof, establishing that the business does not meet or exceed the applicable SBA size standard;
 - (3) That the SBA size standards have been revised in such a manner that the subject business no longer meets or exceeds the size standard for its category based upon the most recent three-year average for receipts or 12 month average for employees, as applicable; or
 - (4) That the criteria listed in section 15-88(d) of this Code demonstrate the need to grant a waiver and withdraw the classification of the business as an established business enterprise.
- (e) Applications for reinstatement shall be on a form prescribed by the OBO director and shall be accompanied by relevant documentary evidence supporting the ground or grounds for reinstatement asserted, as requested by the OBO director.
- (f) Within 30 days following receipt of a completed application for reinstatement, the OBO director shall grant the application or deny the application and set the matter for hearing within 30 days of the date of mailing notice of such denial.
- (g) The burden on the business applying for reinstatement shall be to demonstrate the existence of one or more of the conditions set forth in subsections d(1) through d(4) of this section by clear, convincing and cogent evidence, to be evaluated by the director under hearing procedures consistent with the nature of the application and, to the extent applicable, with the provisions of subsections (c), (d), (e) and (f) of section 15-88 of this Code. In addition, a business seeking reinstatement under subsection (b)(4) of this section that has previously sought a waiver of classification as an established business enterprise pursuant to section 15-88(d) of this chapter must present evidence of a material and substantial change in circumstances not shown at the preceding hearing, and the OBO director or his designee shall disregard evidence that is repetitious or cumulative of the prior hearing on the matter.
- (h) The decision of the OBO director or his designee following a hearing on reinstatement shall be final, and any applicant denied reinstatement is to be notified in writing of the decision within ten days following the hearing. No business denied reinstatement may subsequently apply for reinstatement until the expiration of one year from the date of the denial.

(Ord. No. 2013-428, § 10 (Exh. A), 5-8-2013, eff. 7-1-2013)

EXHIBIT F

ANTI-LOBBYING CERTIFICATION

The undersigned Contractor certifies, to the best of his or her knowledge, that:

- 1) No Federal appropriated funds appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any City agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor Name:	
President:	
Name of Authorized Official:	
Signature:	
Date:	

EXHIBIT G

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The undersigned certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- (b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

Type Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

EXHIBIT H

SECTION 3 REGULATION

§ 135.1

APPENDIX TO PART 135

AUTHORITY: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

SOURCE: 59 FR 33880, June 30, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28325,

May 31, 1995, the effective period was extended until the final rule implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

Subpart A—General Provisions

§ 135.1 Purpose.

- (a) *Section 3.* The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low- income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low- income persons.
- (b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

§ 135.3 Applicability.

- (a) *Section 3 covered assistance.* Section 3 applies to the following HUD assistance (section 3 covered assistance):
 - (1) *Public and Indian housing assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising from the

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expenditure of the following public and Indian housing assistance:

(i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and

(iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) *Housing and community development assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; and

(iii) Other public construction.

(3) *Thresholds—(i) No thresholds for section 3 covered public and Indian housing assistance.* The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contractor subcontract.

(ii) *Thresholds for section 3 covered housing and community development assistance—(A) Recipient thresholds.* The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.

(B) *Contractor and subcontractor thresholds.* The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

SECTION 3 REGULATION

§ 135.1

APPENDIX TO PART 135

AUTHORITY: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

SOURCE: 59 FR 33880, June 30, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28325, May 31, 1995, the effective period was extended until the final rule implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

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(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

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(B) *Contractor and subcontractor thresholds.* The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

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(C) *Threshold met for recipients, but not contractors or subcontractors.* If a recipient receives section 3 covered housing or community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the section 3 preference requirements only apply to the recipient.

(b) *Applicability of section 3 to entire project or activity funded with section 3 assistance.* The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) *Applicability to Indian housing authorities and Indian tribes.* Indian housing authorities and tribes that receive HUD assistance described in paragraph

(a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) *Other HUD assistance and other Federal assistance.* Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§ 135.5 Definitions.

The terms *Department*, *HUD*, *Indian housing authority (IHA)*, *Public housing agency (PHA)*, and *Secretary* are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under

which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of "section 3 business concern" in this section.

Contract. See the definition of "section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in § 135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection.

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(C) *Threshold met for recipients, but not contractors or subcontractors.* If a recipient receives section 3 covered housing or community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the section 3 preference requirements only apply to the recipient.

(b) *Applicability of section 3 to entire project or activity funded with section 3 assistance.* The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) *Applicability to Indian housing authorities and Indian tribes.* Indian housing authorities and tribes that receive HUD assistance described in paragraph

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(a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

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Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under

which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of "section 3 business concern" in this section.

Contract. See the definition of "section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in § 135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection.

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with section 3 covered projects (as described in § 135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of "section 3 resident" in this section.

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Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area. *Other HUD programs* means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for "section 3 covered projects," as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963. *Recipient* means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section—

- (1) That is 51 percent or more owned by section 3 residents; or

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- (2) Whose permanent, full-time employees include persons, at least 30 per cent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all sub-contracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

Section 3 clause means the contract provisions set forth in § 135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means:

- (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;
- (2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;
- (3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;
- (4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:
 - (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
 - (ii) Housing construction; or
 - (iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and

materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 joint venture. See § 135.40. Section 3 resident means: (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) A *low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) A *very low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that

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such variations are necessary because of unusually high or low family in-comes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefitting from the section 3 covered project re- side. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to under- take a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income person. See the definition of "section 3 resident" in this section.

Youthbuild programs. See the definition of "HUD Youthbuild programs" in this section.

[59 FR 33880, June 30, 1994, as amended at 61 FR 5206, Feb. 9, 1996]

§ 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however*, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may

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not be redelegated by the Assistant Secretary.

§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) *Certification of compliance with part*

135. All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part

135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Statement of purpose in NOFAs.*

(1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed \$200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

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(c) *Section 3 as NOFA evaluation criteria.* Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

§ 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) *Procurement standards for States and local governments (24 CFR 85.36)*—(1) *General.* Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) *Flexible Subsidy Program.* Multi-family project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) *Procurement standards for other recipients (OMB Circular No. A-110).* Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of

higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(a) *Federal labor standards provisions.* Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a-276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in "approved apprenticeship and training programs," as described in paragraph (d) of this section.

(b) *Approved apprenticeship and trainee programs.* Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(c) *Compliance with Executive Order 11246.* Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended

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by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

- (a) *General.* (1) Recipients and covered contractor may demonstrate compliance with the "greatest extent feasible" requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.
- (2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.
- (3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.
- (4) The numerical goals established in this section represent minimum numerical targets.
- b. *Training and employment.* The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.
- (1) *Numerical goals for section 3 covered public and Indian housing programs.* Recipients of section 3 covered public and Indian housing assistance (as described in § 135.5) and their contractors and

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subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

- (i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;
 - (ii) 20 percent of the aggregate number of new hires for the one period beginning in FY 1996;
 - (iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.
- (2) *Numerical goals for other HUD programs covered by section 3.* (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or sub-contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as

10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

- (ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or sub-contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

- (i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

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(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
 (iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) *Contracts.* Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or sub-contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

- (1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
- (2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) *Safe harbor and compliance determinations.*

- (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.
- (2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in § 135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

§ 135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the

operations of its contractors and sub-contractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in § 135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in § 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in § 135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in § 135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at § 135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist

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local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

§ 135.34 Preference for section 3 residents in training and employment opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) Where the section 3 project is assisted under the Stewart

B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the section 3 covered project is

located shall be given the highest priority;

(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) *Eligibility for preference.* A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in § 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) *Eligibility for employment.* Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§ 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 per cent or more owned by residents of the housing development or developments

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for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) *Eligibility for preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in § 135.5.

(c) *Ability to complete contract.* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding

the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This

regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR

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part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

B. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (1) preference and opportunities for training and employment shall be given to Indians, and (2) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.40 Providing other economic opportunities.

(a) *General.* In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) *Other training and employment related opportunities.* Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring section 3 residents in

management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) *Other business related economic opportunities.* (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including microenterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A *section 3 joint venture* means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D—Complaint and Compliance Review

§ 135.70 General.

(a) *Purpose.* The purpose of this subpart is to establish the procedures for handling complaints alleging non-compliance with the regulations of this

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part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in § 135.76(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) *Noncompliance with section 3* means failure by a recipient or contractor to comply with the requirements of this part.

(4) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in § 135.7, which includes PHA and IHA.

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under § 135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

§ 135.74 Section 3 compliance review procedures.

(a) *Compliance reviews by Assistant Secretary.* The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) *Form of compliance review.* A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) *Where compliance review reveals noncompliance with section 3 by recipient or contractor.* Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) *Continuing noncompliance by recipient or contractor.* A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor.

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Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) *Conducting compliance review before the award of assistance.* Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) *Consideration of complaints during compliance review.* Complaints alleging noncompliance with section 3, as provided in § 135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

§ 135.76 Filing and processing complaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) *Where to file a complaint.* A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or

omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) *Contents of complaint—(1) Written complaints.* Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) *Amendment of complaint.* Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) *Resolution of complaint by recipient.*

(1) Within ten (10) days of timely filing of a complaint that contains complete

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information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) *Informal resolution of complaint by Assistant Secretary.*—(1) *Dismissal of complaint.* Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the com-

plaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) *Informal resolution.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) *Effective date of informal resolution.* The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) *Sanctions.* Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) *Investigation of complaint.* The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(i) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of

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complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) *Judicial relief*: Nothing in this sub-part D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529-0043)

Subpart E—Reporting and Recordkeeping

§ 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section

3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529-0043)

§ 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

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APPENDIX TO
PART 135

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1) Entering into "first source" hiring agreements with organizations representing Section 3 residents.

(2) Sponsoring a HUD-certified "Step-Up" employment and training program for section 3 residents.

(3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in § 135.34) reside.

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2

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persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a spe

cific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

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(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph

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(1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

- the section 3 covered contract to be awarded with sufficient specificity;
- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

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(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

	X=lesser
When the lowest responsive bid is less than \$100,000	10% of that bid or \$9,000.
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000.
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000.
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000.
\$7 million or more	1 1/2% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(9) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).* (i) For contracts and sub-contracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering

price and all other factors specified in the RFP.

PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

146.1 Purpose of the Age Discrimination Act of 1975.

146.3 Purpose of HUD's age discrimination regulation.

146.5 Applicability of part.

146.7 Definitions.

Subpart B—Standards for Determining Age Discrimination

146.11 Scope of subpart.

146.13 Rules against age discrimination.
Subpart C—Duties of HUD Recipients

146.21 General responsibilities.

146.23 Notice of subrecipients.

146.25 Assurance of compliance and recipient assessment of age distinctions.

146.27 Information requirements.

Subpart D—Investigation, Settlement, and Enforcement Procedures

146.31 Compliance reviews.

146.33 Complaints.

146.35 Mediation.

146.37 Investigation.

146.39 Enforcement procedures.

146.41 Prohibition against intimidation or retaliation.

EXHIBIT I
(Intentionally Omitted)

EXHIBIT J
(Intentionally Omitted)

EXHIBIT K

This document was submitted to the Federal Register on June 9, 2018

Billing Code: 4210-67
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5938-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees under Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016 (Pub. L. 114-113)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates \$299 million in Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016 for the purpose of assisting long-term recovery in South Carolina and Texas. This notice describes applicable waivers and alternative requirements, relevant statutory provisions for grants provided under this notice, the grant award process, criteria for plan approval, and eligible disaster recovery activities. The waivers, alternative requirements, and other provisions of this notice reflect the Department's commitment to expediting recovery, increasing the resilience of impacted communities and ensuring transparency in the use of Federal disaster recovery funds.

DATES: Effective Date: [Insert date 5 days from date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the

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mortgage payments may be due but the home is inhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing rehabilitation payments to expedite recovery assistance to homeowners, but must establish performance milestones for the rehabilitation that are to be met by the homeowner in order to receive such payments. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

32. Acquisition of real property; flood and other buyouts. Grantees under this notice are able to carry out property acquisition for a variety of purposes. However, the term "buyouts" as referenced in this notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas as designated by the grantee. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

Grantees are encouraged to use buyouts strategically, as a means of acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices. To the maximum extent practicable, grantees should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program.

a. Clarification of "Buyout" and "Real Property Acquisition" activities. Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most

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cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-DR funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG-DR assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides post-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG-DR assistance.

Regardless of purchase price, all buyout activities are a type of acquisition of real property (as permitted by section 105(a)(1) of the HCD Act). However, only acquisitions that meet the definition of a "buyout" are subject to the post-acquisition land use restrictions imposed by the applicable prior notices. The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk from future flooding or to reduce the risk from the hazard that lead to the property's Disaster Risk Reduction Area designation. To conduct a buyout in a Disaster Risk Reduction Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) the hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-DR allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

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The distinction between buyouts and other types of acquisitions is important, because grantees may only redevelop an acquired property if the property is not acquired through a buyout program (i.e., the purpose of acquisition was something other than risk reduction). When acquisitions are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (and the pre-disaster FMV may not be used).

a. Buyout requirements:

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the recipient to any Federal entity in perpetuity.

The entity acquiring the property may lease it to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold. In all cases, a deed

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restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG-DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses.

(5) All buyout activities must be classified using the "buyout" activity type in the DRGR system.

(6) Any State grantee implementing a buyout program or activity must consult with affected UGLGs.

(7) When undertaking buyout activities, in order to demonstrate that a buyout meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCD Act and applicable regulatory criteria described below. Grantees are encouraged to consult with HUD prior to undertaking a buyout program with the intent of using the LMH national objective. Section 105(c)(3) of the HCD Act (42 U.S.C. 5305(c)(3)) provides that "[a]ny assisted activity under this chapter that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low- and moderate-income only to the extent such housing will, upon completion, be occupied by such persons." In addition, the State CDBG regulations at 24 CFR 570.483(b)(3) and entitlement CDBG regulations at 24 CFR 570.208(a)(3) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low- and moderate-income households. Therefore, a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and

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moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective. Buyout programs that assist low- and moderate-income persons can be structured in one of the following ways: (a) The buyout program combines the acquisition of properties with another direct benefit—Low- and Moderate-Income housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria in 24 CFR part 570 (e.g., if the structure contains more than two dwelling units, at least 51 percent of the units must be occupied by low- and moderate-income households. (b) The program meets the low- and moderate income area benefit criteria to demonstrate national objective compliance, provided that the grantee can document that the properties acquired through buyouts will be used in a way that benefits all of the residents in a particular area where at least 51 percent of the residents are low- and moderate-income persons. When using the area benefit approach, grantees must define the service area based on the end use of the buyout properties. (c) The program meets the criteria for the low- and moderate-income limited clientele national objective, including the prohibition on the use of the limited clientele national objective when an activity's benefits are available to all residents of the area. A buyout program could meet the national objective criteria for the limited clientele national objective if it restricts buyout program eligibility to exclusively low- and moderate-income persons, and the buyout provides an actual benefit to the low- and moderate income sellers by providing pre-disaster valuation uniformly to those who participate in the program.

c. Redevelopment of acquired properties.

(1) Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. (see subparagraph a(2) above).



Dated: June 9, 2016.
Brian P. Fitzmaurice,
Director, Division of Community Assistance,
Office of Special Needs Assistance Programs.

**TITLE V, FEDERAL SURPLUS PROPERTY
PROGRAM FEDERAL REGISTER REPORT
FOR 06/17/2016**

Suitable/Available Properties

Building

Alabama

Gadsden Federal Building and Courthouse
600 Broad Street
Gadsden AL 35901
Landholding Agency: GSA
Property Number: 54201620018
Status: Excess
GSA Number: 4-G-AL-0805-AA
Comments: 105+ yrs. old; 17,488 sq. ft.; office
& courthouse; listed on the national
historic register; access must be
coordinated, contact GSA for more
information.

Historic Hannah Houses
157 and 159 N Conception Street
Mobile AL 36603
Landholding Agency: GSA
Property Number: 54201620020
Status: Excess
GSA Number: 4-G-AL-0817AAA
Comments: 163+ yrs. old; 8,868 sq. ft.; office;
residential; vacant 120+ mos.;
rehabilitation work needed; contact GSA
for more information.

Maryland

Chapel Naval Station (Facility No. 127NS)
55 Eucalyptus Road
Annapolis MD 21402
Landholding Agency: Navy
Property Number: 77201620019
Status: Underutilized
Comments: off-site removal only; 68+ yrs.
old; 2,062 sq. ft.; storage; 60+ mos. vacant;
repairs needed; no future agency need;
contact Navy for more information.

Massachusetts

Shed
1 Little Harbor Road
Falmouth MA 02543
Landholding Agency: Coast Guard
Property Number: 88201620003
Status: Excess
Comments: off-site removal only; 20+ yrs.
old; 240 sq. ft. each; shed; requires
maintenance; contact Coast Guard for more
information.

North Carolina

Bryson City Federal Building and Courthouse
50 Main Street
Bryson City NC 28713
Landholding Agency: GSA
Property Number: 54201620019
Status: Excess
GSA Number: 4-G-NC-0838-AA
Comments: 54+ yrs. old; 34,156 sq. ft.; office
& courthouse; access must be coordinated;
lease expires less than 6 mos.; sits on 1.3
acres of land; contact GSA for more
information.

Virginia

Bldg. 27267
Bldg. 27267; MCB-4

Martine Corps Base
Quantico VA 22134
Landholding Agency: Navy
Property Number: 77201620020
Status: Unutilized
Comments: off-site removal only; 13+ yrs.
old; 713 sq. ft.; storage; no future agency
need; contact Navy for more information.

Washington

Wenatchee Federal Building
301 Yakima Street
Wenatchee WA 98001
Landholding Agency: GSA
Property Number: 54201620012
Status: Excess
GSA Number: 9-G-WA-1286
Directions: The property is leased to
governmental tenants and will continue to
be leased 24 months from the date of sale
with the option, to renew for a 5-year term.
Comments: 104,414 sf 4 story office building
with full basement and mechanical
penthouse constructed in 1973 on a 2.7-
acre lot with 129 parking spaces; contact
GSA for more information.

N Border Housing at the Laurie

LOPE
27107 Highway 395 North
Laurier WA 99146
Landholding Agency: GSA
Property Number: 54201620022
Status: Excess
GSA Number: 9-G-WA-1297-AA
Comments: off-site removal only; 80+ yrs.
old; 1,970 sq. ft.; due to size/+yrs.
relocation extremely difficult; storage;
144+ mos. vacant; contacts GSA for more
information.

South Border Housing at the Laurie LOPE

27107 Highway 395 North
Laurier WA 99146
Landholding Agency: GSA
Property Number: 54201620023
Status: Excess
GSA Number: 9-G-WA-1297-AB
Comments: off-site removal only; 80+ yrs.
old; 2,200 sq. ft.; due to size/+yrs.
relocation extremely difficult storage; 144+
mos. vacant; contact GSA for more
information.

Unsuitable Properties

Building

Maryland

Mini Mart/Package Store
(Facility #178NS)180 Kinkaid Road
Annapolis MD 21402
Landholding Agency: Navy
Property Number: 77201620018
Status: Underutilized
Comments: documented deficiencies:
documentation provided represents a clear
threat to personal physical safety;
structural damages; hit by a vehicle 02/11/
11.

Reasons: Extensive deterioration

Massachusetts

3 Buildings

1 Little Harbor Rd.
Falmouth MA 02543
Landholding Agency: Coast Guard
Property Number: 88201620002
Status: Excess

Directions: Aids to Navigation Bldg.;
Engineering Bldg., Supply Bldg.
Comments: public access denied and no
alternative method to gain access without
compromising national security.
Reasons: Secured Area

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BILLING CODE 4210-67-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5938-N-01]

**Allocations, Common Application,
Waivers, and Alternative Requirements
for Community Development Block
Grant Disaster Recovery Grantees**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates \$299
million in Community Development
Block Grant disaster recovery (CDBG-
DR) funds appropriated by the
Transportation, Housing and Urban
Development, and Related Agencies
Appropriations Act of 2016 for the
purpose of assisting long-term recovery
in South Carolina and Texas. This
notice describes applicable waivers and
alternative requirements, relevant
statutory provisions for grants provided
under this notice, the grant award
process, criteria for plan approval, and
eligible disaster recovery activities. The
waivers, alternative requirements, and
other provisions of this notice reflect the
Department's commitment to expediting
recovery, increasing the resilience of
impacted communities and ensuring
transparency in the use of Federal
disaster recovery funds.

DATES: *Effective Date:* June 22, 2016.

FOR FURTHER INFORMATION CONTACT:
Stanley Gimont, Director, Office of
Block Grant Assistance, Department of
Housing and Urban Development, 451
7th Street SW., Room 7286, Washington,
DC 20410, telephone number 202-708-
3587. Persons with hearing or speech
impairments may access this number
via TTY by calling the Federal Relay
Service at 800-877-8339. Facsimile
inquiries may be sent to Mr. Gimont at
202-401-2044. (Except for the "800"
number, these telephone numbers are
not toll-free.) Email inquiries may be
sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

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 Appendix A: Allocation Methodology

I. Allocations

Section 420 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015) (Appropriations

Act) makes available \$300 million in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2015, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*), related to the consequences of Hurricane Joaquin and adjacent storm systems, Hurricane Patricia, and other flood events. The Appropriations Act provides \$1 million of these funds for the Department's management and oversight of funded

disaster recovery grants. The law provides that grants shall be awarded directly to a State or unit of general local government (UGLG) at the discretion of the Secretary. Unless noted otherwise, the term "grantee" refers to the State or UGLG receiving a direct award from HUD under this notice. To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD allocates funds using the best available data that cover all of the eligible affected areas.

Based on a review of the impacts from these disasters, and estimates of unmet need, HUD is making the following allocations:

TABLE 1—ALLOCATIONS UNDER PUBLIC LAW 114–113

Disaster No.	State	Grantee	Allocation	Minimum amount that must be expended for recovery in the HUD-identified "most impacted" areas identified
4241	South Carolina	Lexington County (Urban County).	\$16,332,000	(\$16,332,000) Lexington County Urban County jurisdiction.
4241	South Carolina	Columbia	19,989,000	(19,989,000) City of Columbia.
4241	South Carolina	Richland County (Urban County).	23,516,000	(23,516,000) Richland County Urban County jurisdiction.
4241	South Carolina	State of South Carolina ...	96,827,000	(65,494,200) Charleston, Dorchester, Florence, Georgetown, Horry, Lexington, Richland, Sumter, Williamsburg.
4223, 4245	Texas	Houston	66,560,000	(66,560,000) City of Houston.
4223, 4245	Texas	San Marcos	25,080,000	(25,080,000) City of San Marcos.
4223, 4245	Texas	State of Texas	50,696,000	(22,228,800) Harris, Hays, Hidalgo, Travis.
Total	299,000,000	

Table 1 also shows the HUD-identified "most impacted and distressed" areas impacted by the disasters that did not receive a direct award. At least 80 percent of the total funds provided within each State under this notice must address unmet needs within the HUD-identified "most impacted and distressed" areas, as identified in the last column in Table 1. A State may determine where the remaining 20 percent may be spent by identifying areas it deems as "most impacted and distressed." A detailed explanation of HUD's allocation methodology is provided at Appendix A.

Each grantee receiving an allocation under this notice must submit an initial action plan for disaster recovery, or "action plan," no later than 90 days after the effective date of this notice. HUD will only approve action plans that meet the specific requirements identified in this notice under section VI, "Applicable Rules, Statutes, Waivers, and Alternative Requirements."

II. Use of Funds

The Appropriations Act requires that prior to the obligation of funds a grantee shall submit a plan detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address long-term recovery, restoration of infrastructure, and housing and economic revitalization in the most impacted and distressed areas. Thus, an action plan for disaster recovery must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (HCD Act) or allowed by a waiver or alternative requirement published in this notice, and (2) respond to a disaster-related impact. To inform the plan, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities.

Additionally, as provided for in the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an

eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) and the U.S. Army Corps of Engineers (USACE), among other Federal sources. In accordance with Public Law 105–276, grantees are advised that not more than \$250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through USACE. Additionally, CDBG–DR funds cannot supplant, and may not be used for activities reimbursable by or for which funds are made available by FEMA or USACE.

III. Management and Oversight of Funds

Consistent with 2 CFR 200.205 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements), HUD will evaluate the risks posed by grantees before they receive Federal awards. HUD believes there is merit in establishing an assessment method similar to the method employed under a prior CDBG–DR appropriation

(Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2)). Therefore, this notice requires grantees to submit documentation required by paragraphs (1) through (8) below ("Risk Analysis Documentation") in advance of signing a grant agreement that will allow the Department to ensure that grantees can adequately manage and oversee the CDBG-DR award.

The grant terms of the award will reflect HUD's risk assessment of the grantee and will require the grantee to adhere to the description of its grant oversight and implementation plan submitted in response to this notice (as described in paragraph 8 of section III of this notice). HUD will also institute an annual risk analysis as well as on-site monitoring of grantee management to further guide oversight of these funds.

Each grantee must submit Risk Analysis Documentation to demonstrate in advance of signing a grant agreement that it has in place proficient controls, procedures, and management capacity. This includes demonstrating financial controls, procurement processes, and adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act. The grantee must also demonstrate that it can effectively manage the funds, ensure timely expenditure of funds, maintain a comprehensive Web site regarding all disaster recovery activities assisted with these funds, and ensure timely communication of application status to applicants for disaster recovery assistance. Grantees must also demonstrate adequate capacity to manage the funds and address any capacity needs. In order to demonstrate proficient controls, procedures, and management capacity, each grantee must submit the following Risk Analysis Documentation to the grantee's designated HUD representative within 30 days of the effective date of this notice, or with the grantee's submission of its action plan, whichever date is earlier.

1. *Financial Controls.* A grantee has in place proficient financial controls if each of the following criteria is satisfied:

- a. The grantee's most recent single audit and annual financial statement indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the single audit or annual financial statement identified weaknesses or deficiencies, the grantee must provide documentation showing how those weaknesses have been removed or are being addressed; and
- b. The grantee has assessed its financial standards and has completed

the HUD monitoring guide for financial standards (Pub. L. 114-113, Guide for Review of Financial Management (the Financial Management Guide)). The grantee's standards must conform to the requirements of the Financial Management Guide. The grantee must identify which sections of its financial standards address each of the questions in the guide and which personnel or unit are responsible for each item.

2. *Procurement.* A grantee has in place a proficient procurement process if:

- a. For local governments: The grantee will follow the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable). The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate these provisions. The procedures should also indicate which personnel or unit are responsible for each item; or
- b. For States: The grantee has adopted 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable), or the effect of the grantee's procurement process/standards are equivalent to the effect of procurements under 2 CFR 200.318 through 200.326, meaning that the process/standards operate in a manner providing fair and open competition. The grantee must provide its procurement standards and indicate how the sections of its procurement standards align with the provisions of 2 CFR 200.318 through 200.326, so that HUD may evaluate the overall effect of the grantee's procurement standards. The procedures should also indicate which personnel or unit are responsible for the task. Guidance on the procurement rules applicable to States is provided in paragraph A.22, section VI, of this notice.

3. *Duplication of benefits.* A grantee has adequate procedures to prevent the duplication of benefits when it provides HUD a uniform prevention of duplication of benefits procedure wherein the grantee identifies its processes for each of the following: (1) Verifying all sources of disaster assistance received by the grantee or applicant, as applicable; (2) determining an applicant's unmet need(s) before awarding assistance; and (3) ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. Grantee procedures shall provide that prior to the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and other sources of funding to

prevent the duplication of benefits. The procedures should also indicate which personnel or unit is responsible for the task. Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011) and in paragraph A.21, section VI, of this notice.

4. *Timely expenditures.* A grantee has adequate procedures to determine timely expenditures if a grantee provides procedures to HUD that indicate how the grantee will track expenditures each month, how it will monitor expenditures of its recipients, how it will reprogram funds in a timely manner for activities that are stalled, and how it will project expenditures to provide for the expenditure of all CDBG-DR funds within the period provided for in paragraph A.24 of section VI of this notice. The procedures should also indicate which personnel or unit is responsible for the task.

5. *Management of funds.* A grantee has adequate procedures to effectively manage funds if its procedures indicate how the grantee will verify the accuracy of information provided by applicants; if it provides a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and if it demonstrates that it has an internal auditor and includes a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse.

6. *Comprehensive disaster recovery Web site.* A grantee has adequate procedures to maintain a comprehensive Web site regarding all disaster recovery activities if its procedures indicate that the grantee will have a separate page dedicated to its disaster recovery that will contain links to all action plans, action plan amendments, performance reports, citizen participation requirements, contracts and activity/program information for activities described in the action plan. The procedures should also indicate the frequency of Web site updates and which personnel or unit is responsible for the task.

7. *Timely information on application status.* A grantee has adequate procedures to inform applicants of the status of their applications for recovery assistance, at all phases, if its procedures indicate methods for communication (*i.e.*, Web site, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates and identify

which personnel or unit is responsible for the task.

8. *Preaward Implementation Plan.* In order to assess risk as described in 2 CFR 200.205(b) and (c), the grantee will submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps. HUD will determine a plan is adequate to reduce risk if, at a minimum:

a. *Capacity Assessment.* The grantee has conducted an assessment of its capacity to carry out recovery efforts, and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified.

b. *Staffing.* The plan shows that the grantee has assessed staff capacity and identified personnel that will be in place for purposes of case management in proportion to the applicant population; program managers who will be assigned responsibility for each primary recovery area (*i.e.*, housing, economic revitalization, and infrastructure); and staff responsible for procurement/contract management, environmental compliance and compliance with applicable requirements, as well as staff responsible for monitoring and quality assurance, and financial management. An adequate plan will also provide for an internal audit function with responsible audit staff reporting independently to the chief officer or board of the governing body of any designated administering entity.

c. *Internal and Interagency Coordination.* The grantee's plan describes, in the plan, how it will ensure effective communication between different departments and divisions within the grantee's organizational structure that are involved in CDBG-DR-funded recovery efforts between its lead agency and subrecipients responsible for implementing the grantee's action plan, and with other local and regional planning efforts to ensure consistency.

d. *Technical Assistance.* The grantee's implementation plan describes its plan for the procurement and provision of technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill gaps in knowledge or technical expertise required for successful and timely recovery implementation where identified in the capacity assessment.

e. *Accountability.* The grantee's plan identifies the principal lead agency responsible for implementation of the jurisdiction's CDBG-DR award and indicates that the head of that agency

will report directly to the chief executive officer of the jurisdiction.

9. *Certification of Accuracy of Risk Analysis Documentation.* The grantee must submit a certification to the accuracy of its Risk Analysis Documentation submissions as required by section VI.E.44 of this notice.

Additionally, this notice requires grantees to submit to the Department a projection of expenditures and outcomes as part of its action plan for approval. Any subsequent changes, updates or revision of the projections will require the grantee to amend its action plan to reflect the new projections. This will enable HUD, the public, and the grantee to track planned versus actual performance. For more information on the projection requirements, see paragraph A.1.i of section VI of this notice.

In addition, grantees must enter expected completion dates for each activity in HUD's Disaster Recovery Grant Reporting (DRGR) system. When target dates are not met or are extended, grantees are required to explain the reason for the delay in the Quarterly Performance Report (QPR) activity narrative. For additional guidance on DRGR system reporting requirements, see paragraph A.2 under section VI of this notice. More information on the timely expenditure of funds is included in paragraphs A.24-27 under section VI of this notice.

Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section VI of this notice. The Department will institute risk analysis and on-site monitoring of grantee management to guide oversight of these funds.

IV. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including, but not limited to, requirements concerning lead-based paint). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title 1 of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. Grantees

may request such waivers, as described in Section VI of this notice.

V. Overview of Grant Process

To begin expenditure of CDBG-DR funds, the following expedited steps are necessary:

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of paragraph A.3 of section VI of this notice.

- Grantee consults with stakeholders, including required consultation with affected, local governments and public housing authorities (as identified in section VI of this notice).

- Within 30 days of the effective date of this notice (or when the grantee submits its action plan, whichever is earlier), the grantee submits the required documentation in its Risk Analysis Documentation in order to demonstrate proficient controls, procedures, and management capacity, as described in section III of this notice.

- Grantee publishes its action plan for disaster recovery on the grantee's required disaster recovery Web site for no less than 14 calendar days to solicit public comment.

- Grantee responds to public comment and submits its action plan (which includes Standard Form 424 (SF-424) and certifications) to HUD no later than 90 days after the date of this notice.

- HUD expedites review (allotted 60 days from date of receipt) and approves the action plan according to criteria identified in this notice.

- HUD sends an action plan approval letter, grant conditions, and grant agreement to the grantee. If the action plan is not approved, a letter will be sent identifying its deficiencies; the grantee must then resubmit the action plan within 45 days of the notification letter.

- Grantee signs and returns the fully executed grant agreement.

- Grantee ensures that the final HUD-approved action plan is posted on its official Web site.

- HUD establishes the grantee's line of credit.

- Grantee requests and receives DRGR system access (if the grantee does not already have DRGR access).

- If it has not already done so, grantee enters the activities from its published action plan into the DRGR system and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system).

- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24

CFR part 58 and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification.

The grantee must begin to draw down funds no later than 180 days after the date of this notice.

VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements imposed by the Appropriations Act, as well as applicable waivers and alternative requirements. For each waiver and alternative requirement, the Secretary has determined that good cause exists and the action remains consistent with the overall purpose of the HCD Act. The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also ensuring that statutory requirements are met. The following requirements apply only to the CDBG-DR funds appropriated in the Appropriations Act, and not to funds provided under the annual formula State or Entitlement CDBG programs, or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program, or any prior CDBG-DR appropriation.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Except where noted, waivers and alternative requirements described below apply to all grantees under this notice. Under the requirements of the Appropriations Act, waivers and alternative requirements must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

Except as described in this notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this notice while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to entitlement communities receiving an allocation. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and Entitlement regulations can be found at 24 CFR part 570.

References to the action plan in these regulations shall refer to the action plan required by this notice. All references in this notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The date

of this notice shall mean the effective date of this notice unless otherwise noted.

A. Grant Administration

1. *Action Plan for Disaster Recovery waiver and alternative requirement.* Requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 91.220, and 24 CFR 91.320, are waived for these disaster recovery grants. Instead, grantees must submit to HUD an action plan for disaster recovery. This streamlined plan will allow grantees to quickly implement disaster recovery programs while conforming to applicable requirements. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy all of the required elements identified in this notice.

a. *Action Plan.* The action plan must identify the proposed use of all funds, including criteria for eligibility, and how the uses address long-term recovery needs. Funds dedicated for uses not described in accordance with paragraphs b or c under this section will not be obligated until the grantee submits, and HUD approves, an action plan amendment programming the use of those funds, at the necessary level of detail.

The action plan must contain:

1. An impact and unmet needs assessment. Each grantee must develop a needs assessment to understand the type and location of community needs to enable it to target limited resources to areas with the greatest need. Grantees receiving an award under this notice must conduct a needs assessment to inform the allocation of CDBG-DR resources. At a minimum, the needs assessment must evaluate three core aspects of recovery—housing (interim and permanent, owner and rental, single-family and multifamily, affordable and market rate, and housing to meet the needs of predisaster homeless persons), infrastructure, and the economy (e.g., estimated job losses). The assessment must also take into account the various forms of assistance available to, or likely to be available to, affected communities (e.g., projected FEMA funds) and individuals (e.g., estimated insurance) to ensure CDBG-DR funds meet needs that are not likely to be addressed by other sources of funds. Grantees must also assess

whether public services (i.e., job training, mental health and general health services) are necessary to complement activities intended to address housing and economic revitalization needs. The assessment must use the most recent available data and cite data sources. CDBG-DR funds may be used to develop the action plan, including the needs assessment, environmental review, and citizen participation requirements.

Impacts should be described geographically by type at the lowest level practicable (e.g., county level or lower if available for States, and neighborhood or census tract level for cities). Grantees should use the most recent available data and estimate the portion of need likely to be addressed by insurance proceeds, other Federal assistance, or any other funding source (thus producing an estimate of unmet need). In addition, a needs assessment must take into account the costs of incorporating mitigation and resilience measures to protect against future hazards, including the anticipated effects of climate change on those hazards. HUD has developed a Disaster Impact and Unmet Needs Assessment Kit to guide CDBG-DR grantees through a process for identifying and prioritizing critical unmet needs for long-term community recovery, and it is available on the HUD Exchange Web site at https://www.hudexchange.info/resources/documents/Disaster_Recovery_Disaster_Impact_Needs_Assessment_Kit.pdf.

Disaster recovery needs evolve over time and the needs assessment and action plan are expected to be amended as conditions change and additional needs are identified.

2. A description of the connection between identified unmet needs and the allocation of CDBG-DR resources by the grantee. Such description must demonstrate a reasonably proportionate allocation of resources relative to areas and categories (i.e., housing, economic revitalization, infrastructure) of greatest needs, including how the proposed allocation addressing the identified unmet needs of public housing, HUD-assisted housing, homeless facilities and other housing identified in paragraph 7 below.

3. A description of how the grantee plans to: (a) Adhere to the advanced elevation requirements established in paragraph A.28 of section VI of this notice; (b) promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account

continued sea level rise; and (c) coordinate with other local and regional planning efforts to ensure consistency. This information should be based on the history of FEMA flood mitigation efforts, and take into account projected increase in sea level and frequency and intensity of precipitation events, which is not considered in current FEMA maps and National Flood Insurance Program premiums.

4. A description of how the grantee will leverage CDBG-DR funds with funding provided by other Federal, State, local, private, and nonprofit sources to generate a more effective and comprehensive recovery. Examples of other Federal sources are those provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), Economic Development Administration, USACE, and the U.S. Department of Agriculture. The grantee should seek to maximize the number of activities and the degree to which CDBG funds are leveraged. Grantees shall report on leveraged funds in the DRGR system.

5. A description of how the grantee will design and implement programs or activities with the goal of protecting people and property from harm, and a description of how construction methods used will emphasize high quality, durability, energy efficiency, sustainability, and mold resistance, including how it will support adoption and enforcement of modern building codes and mitigation of hazard risk, including possible sea level rise, high winds, storm surge, and flooding, where appropriate. The grantee must also describe how it will implement and ensure compliance with the Green Building standards required in paragraph A.28 of section VI of this notice. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Whenever feasible, grantees should follow best practices such as those provided by the U.S. Department of Energy's Guidelines for Home Energy Professionals—Professional Certifications and Standard Work Specifications. HUD also encourages grantees to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's water Web site; Indoor AirPlus Web site; Healthy Indoor Environment Protocols

for Home Energy Upgrades Web site; and ENERGY STAR Web site: www.epa.gov/greenbuilding.

6. A description of the standards to be established for housing and small business rehabilitation contractors performing work in the jurisdiction and a mechanism for homeowners and small business owners to appeal rehabilitation contractor work. HUD strongly encourages the grantee to require a warranty period post-construction, with formal notification to homeowners and small business owners on a periodic basis (e.g., 6 months and one month prior to expiration date of the warranty).

7. Each grantee must include a description of how it will identify and address the rehabilitation (as defined at 24 CFR 570.202), reconstruction and replacement of the following types of housing affected by the disaster: Public housing (including administrative offices), HUD-assisted housing (defined at subparagraph 1 above), McKinney-Vento Homeless Assistance Act-funded shelters and housing for the homeless—including emergency shelters and transitional and permanent housing for the homeless, and private market units receiving project-based assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program.

8. A description of how the grantee will encourage the provision of housing for all income groups that is resilient to natural hazards, including a description of the activities it plans to undertake to address: (a) The transitional housing, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) that are homeless and at-risk of homelessness; (b) the prevention of low-income individuals and families with children (especially those with incomes below 30 percent of the area median) from becoming homeless; and (c) the special needs of persons who are not homeless but require supportive housing (e.g., elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315(e) or 91.215(e) as applicable). Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and ways to promote the availability of affordable housing in low-poverty, nonminority areas where appropriate and in response to natural hazard-related impacts.

9. A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced.

10. A description of how the grantee will handle program income, and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in this notice at paragraphs A.2 and A.17 of section VI.

11. A description of monitoring standards and procedures that are sufficient to ensure program requirements, including an analysis for duplication of benefits, are met and that provide for continual quality assurance and adequate program oversight.

b. *Funds Awarded Directly to a State.* The action plan shall describe the method of distribution of funds to UGLGs and/or descriptions of specific programs or activities the State will carry out directly (see section VI.A.4 of this notice for the alternative requirement permitting States to carry out activities directly). The description must include:

1. How the needs assessment informed allocation determinations, including the rationale behind the decision(s) to provide funds to State-identified "most impacted and distressed" areas that were not defined by HUD as being "most impacted and distressed," if applicable.

2. The threshold factors and grant size limits that are to be applied.

3. The projected uses for the CDBG-DR funds, by responsible entity, activity, and geographic area, when the State carries out an activity directly.

4. For each proposed program and/or activity carried out directly, its respective CDBG activity eligibility category (or categories) as well as national objective(s).

5. How the method of distribution to local governments or programs/activities carried out directly will result in long-term recovery from specific impacts of the disaster.

6. When funds are allocated to UGLGs, all criteria used to distribute funds to local governments including the relative importance of each criterion.

7. When applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

c. *Funds awarded directly to a UGLG.* The UGLG shall describe specific programs and/or activities it will carry out. The action plan must describe:

1. How the needs assessment informed allocation determinations.

2. The threshold factors and grant size limits that are to be applied.

3. The projected uses for the CDBG-DR funds, by responsible entity, activity, and geographic area.

4. How the projected uses of the funds will meet CDBG eligibility criteria and a national objective.

5. How the projected uses of funds will result in long-term recovery from specific impacts of the disaster.

6. All criteria used to select applications, including the relative importance of each criterion.

d. Clarification of disaster-related activities. All CDBG-DR activities must clearly address an impact of the disaster for which funding was allocated. Given the standard CDBG requirements, this means each activity must: (1) Be CDBG-eligible (or receive a waiver), (2) meet a national objective, and (3) address a direct or indirect impact from the disaster in a Presidentially-declared county. A disaster-related impact can be addressed through any eligible CDBG activity. Additional details on disaster-related activities are provided under section VI, parts B through D. Additionally, HUD has developed a series of CDBG-DR toolkits that guide grantees through specific grant implementation activities. These can be found on the HUD Exchange Web site at <https://www.hudexchange.info/programs/cdbg-dr/toolkits/>.

1. Housing. Typical housing activities include new construction and rehabilitation of single-family or multifamily units. Most often, grantees use CDBG-DR funds to rehabilitate damaged homes and rental units. However, grantees may also fund new construction (see paragraph 28 of section VI of this notice) or rehabilitate units *not* damaged by the disaster if the activity clearly addresses a disaster-related impact and is located in a disaster-affected area. This impact can be demonstrated by the disaster's overall effect on the quality, quantity, and affordability of the housing stock and the resulting inability of that stock to meet post-disaster needs and population demands.

a. Prohibition on forced mortgage payoff. In some instances, homeowners with an outstanding mortgage balance are required, under the terms of their loan agreement, to repay the balance of the mortgage loan prior to using assistance to rehabilitate or reconstruct their homes. CDBG-DR funds, however, may not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG-DR funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not available to the homeowner and, therefore, do not constitute a duplication of benefits for

the purpose of housing rehabilitation or reconstruction.

b. Housing Counseling Services. HUD-approved housing counseling agencies play a critical role in helping communities recover from a disaster by providing helpful information about key housing programs and resources available to both renters and homeowners. Grantees are encouraged to coordinate with approved housing counseling services to ensure that such services are made available to both renters and homeowners. Additional information is available for South Carolina at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=SC>, and for Texas at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=TX>.

2. Infrastructure. Typical infrastructure activities include the repair, replacement, or relocation of damaged public facilities and improvements to include, but not be limited to, bridges, water treatment facilities, roads, and sewer and water lines. Grantees that use CDBG-DR funds to assist flood control structures (*i.e.*, dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. Grantees that use CDBG-DR funds for levees and dams are required to: (1) Register and maintain entries regarding such structures with the U.S. Army Corps of Engineers National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the U.S. Army Corps of Engineers PL 84-99 Program (Levee Rehabilitation and Improvement Program); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) upload into DRGR system the exact location of the structure and the area served and protected by the structure; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures.

3. Economic Revitalization. For CDBG-DR purposes, economic revitalization may include any CDBG-DR eligible activity that demonstrably restores and improves some aspect of the local economy. The activity may address job losses, or negative impacts to tax revenues or businesses. Examples of eligible activities include providing loans and grants to businesses, funding job training, making improvements to commercial/retail districts, and financing other efforts that attract/retain

workers in devastated communities. For additional guidance see <http://www.iedonline.org/web-pages/resources-publications/iedc-releases-new-disaster-recovery-publication/>.

All economic revitalization activities must address an economic impact(s) caused by the disaster (*e.g.*, loss of jobs, loss of public revenue). Through its needs assessment and action plan, the grantee must clearly identify the economic loss or need resulting from the disaster, and how the proposed activities will address that loss or need. Local and regional economic recoveries are typically driven by small businesses.

4. Preparedness and Mitigation. The Appropriations Act states that funds shall be used for recovering from a Presidentially declared major disaster and all assisted activities must respond to the impacts of the declared disaster. HUD strongly encourages grantees to incorporate preparedness and mitigation measures into the aforementioned rebuilding activities, which help to ensure that communities recover to be safer and stronger than prior to the disaster. Incorporation of these measures also reduces costs in recovering from future disasters. Mitigation measures that are not incorporated into those rebuilding activities must be a necessary expense related to disaster relief, long-term recovery, and restoration of infrastructure, housing, or economic revitalization that responds to the eligible disaster. Furthermore, the costs associated with these measures may not prevent the grantee from meeting unmet needs.

5. Connection to the Disaster. Grantees must maintain records about each activity funded, as described in the Recordkeeping section of this notice. In regard to physical losses, damage or rebuilding estimates are often the most effective tools for demonstrating the connection to the disaster. For economic or other nonphysical losses, post-disaster analyses or assessments may best document the relationship between the loss and the disaster.

Note that grantees are not limited in their recovery to returning to predisaster conditions. Rather, HUD encourages grantees to carry out activities in such a way that not only addresses the disaster-related impacts, but leaves communities sustainably positioned to meet the needs of their post-disaster population, economic, and environmental conditions.

e. Clarity of Action Plan. All grantees must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to

prepare responsive applications to the grantee. The action plan (and subsequent Amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, subgrantee, grantee-administered activity, or other category).

f. *Review and Approval of Action Plan.* For funds provided under the Appropriations Act, the action plan must be submitted to HUD (including SF-424 and certifications) within 90 days of the date of this notice. HUD will expedite its review of each action plan, taking no more than 60 days from the date of receipt to complete its review. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the Plan does not meet the requirements of this notice.

g. *Obligation and expenditure of funds.* Once HUD approves the action plan, it will then issue a grant agreement obligating all funds to the grantee. In addition, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee must also enter its action plan activities into the DRGR system in order to draw funds for those activities. The grantee may enter these activities into the DRGR system before or after submission of the action plan to HUD. Each activity must meet the applicable environmental requirements prior to the use of funds. After the Responsible Entity (usually the grantee) completes environmental review(s) pursuant to 24 CFR part 58 (as applicable) and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds must begin no later than 180 days after the date of this notice.

h. *Amending the Action Plan.* As the grantee finalizes its long-term recovery goals, or as needs change through the recovery process, the grantee must amend its action plan to update its needs assessment, modify or create new activities, or reprogram funds, as necessary. Each amendment must be highlighted, or otherwise identified, within the context of the entire action plan. The beginning of every action plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The action plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent

version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

i. *Projection of expenditures and outcomes.* Each grantee must amend its published action plan to project expenditures and outcomes within 90 days of action plan approval. The projections must be based on each quarter's expected performance—beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The published action plan must be amended to accommodate any subsequent changes, updates or revision of the projections. Guidance on the preparation of projection is available on the HUD Web site. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance.

2. *HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.*

a. *Performance review authorities.* 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the Quarterly Performance Report (QPR) and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at <https://www.hudexchange.info/programs/drgr/>.

b. *DRGR Action Plan.* Each grantee must enter its action plan for disaster recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to

serve as the basis for acceptable performance reports and permit HUD review of compliance requirements.

The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-DR funds. The grantee may enter activities into the DRGR system before or after submission of the action plan to HUD. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity.

All funds programmed or budgeted at a general level in the DRGR system will be restricted from access on the grantee's line of credit. Once the general uses are described in an amended action plan, at the necessary level of detail, the funds will be released by HUD and made available for use.

Each activity entered into the DRGR system must also be categorized under a "project." Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., housing, infrastructure, or economic revitalization) or are based on an area of service (e.g., Community A). If a grantee describes just one program within a broader category (e.g., single family rehabilitation), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project's budget. If a State grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published action plan, the MOD itself typically serves as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as subgrantees and subrecipients decide which specific CDBG-DR programs and projects will be funded.

c. *Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination.* Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The grantee's QPR will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets,

obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring.

d. *Tracking program income in the DRGR system.* Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds (if applicable). If a grantee permits local governments or subrecipients to retain program income, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

e. *DRGR system Quarterly Performance Report (QPR).* Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official Web site. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full calendar year quarter after HUD enters the grant award into the DRGR system. For example, a grant award made in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend funding until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number

of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. The DRGR system will automatically display the amount of program income received, the amount of program income reported as disbursed, and the amount of grant funds disbursed. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

3. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at a State, entitlement, or local government level, but do require providing a reasonable opportunity (at least 14 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant administered under this notice are:

a. *Publication of the Action Plan, opportunity for public comment, and substantial amendment criteria.* Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery should be navigable by citizens from the grantee (or relevant agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Despite the expedited process, grantees are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the

jurisdiction. This issue may be particularly applicable to States receiving an award under this notice. Unlike grantees in the regular State CDBG program, State grantees under this notice may make grants throughout the State, including to entitlement communities. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published on January 22, 2007, in the *Federal Register* (72 FR 2732).

Subsequent to publication of the action plan, the grantee must provide a reasonable time frame (again, no less than 14 days) and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in their action plan. The grantee may substantially amend the action plan if it follows the same procedures required in this notice for the preparation and submission of an action plan for disaster recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this notice, and all applicable regulations and Federal law.

b. *Nonsubstantial amendment.* The grantee must notify HUD, but is not required to undertake public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's Web site. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days. The grantee must define what constitutes a nonsubstantial amendment in its Citizen Participation Plan.

c. *Consideration of public comments.* The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these

comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment.

d. *Availability and accessibility of the Action Plan.* The grantee must make the action plan, any substantial amendments, and all performance reports available to the public on its Web site and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds.

e. *Public Web site.* HUD is requiring grantees to maintain a public Web site that provides information accounting for how all grant funds are used and managed/administered, including links to all action plans, action plan amendments, performance reports, citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its Web site: (1) The action plan (including all amendments); each QPR (as created using the DRGR system); (2) procurement policies and procedures; (3) executed CDBG-DR contracts; and (4) status of services or goods currently being procured by the grantee (e.g., phase of the procurement, requirements for proposals, etc.).

f. *Application status.* HUD is requiring grantees to provide mediums of communication, such as Web sites or other means that provide individual applicants for recovery assistance with timely information on the status of their application, as provided for section III.7 of this notice.

g. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint, if practicable.

4. *Direct grant administration and means of carrying out eligible activities—applicable to State grantees only.* Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under this notice, rather than distribute all funds to UGLGs. Pursuant to this waiver, the standard at section 570.480(c) and the provisions at 42

U.S.C. 5304(e)(2) will also include activities that the State carries out directly. Activities eligible under this notice may be carried out, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements. Note that any city or county receiving a direct award from HUD under this notice will be subject to the standard CDBG entitlement program regulations and this waiver and alternative requirement is not applicable.

Activities made eligible under section 105(a)(15) of the HCD Act, as amended, whether the assistance is provided to such an entity from the State or from a UGLG, will follow the definition of a nonprofit under that section rather than the Entitlement program definition located in 24 CFR 570.204, even in such cases where the UGLG is an Entitlement jurisdiction.

5. *Consolidated Plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 24 CFR 91.225(a)(5), 24 CFR 91.325(b)(2), and 24 CFR 91.225(b)(3)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee submits its next full (3–5 year) consolidated plan, or for 24 months after the effective date of this notice, whichever is less. If the grantee is not scheduled to submit a new 3–5 year consolidated plan within the next 2 years, HUD expects each grantee to update its existing 3–5 year consolidated plan to reflect disaster-related needs no later than 24 months after the effective date of this notice. Additionally, grantees are encouraged to incorporate disaster-recovery needs into their consolidated plan updates as soon as practicable, any unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update no later than its Fiscal Year 2017 update. HUD has issued guidance for incorporating CDBG-DR funds into consolidated plans in the eCon Planning Suite. This guidance is on the HUD Exchange at [https://www.hudexchange.info/resource/4400/updating-the-consolidated-plan-to-reflect-disaster-](https://www.hudexchange.info/resource/4400/updating-the-consolidated-plan-to-reflect-disaster-recovery-needs-and-associated-priorities/)

recovery-needs-and-associated-priorities/. This waiver does not affect the requirements of HUD's July 16, 2015, final rule on Affirmatively Furthering Fair Housing (80 FR 42272), which requires grantees to complete an Assessment of Fair Housing in accordance with the requirements of 24 CFR 5.160.

6. *Requirement for consultation during plan preparation.* Currently, the statute and regulations require States to consult with affected UGLGs in nonentitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that any State receiving an allocation under this notice consult with all disaster-affected UGLGs (including any CDBG-entitlement communities and any local public housing authorities) in determining the use of funds. This ensures that State grantees sufficiently assess the recovery needs of all areas affected by the disaster. Additional guidance on consultation with local stakeholders can be found in publications such as *Equity in Building Resilience in Adaptation Planning*, produced by the National Association for the Advancement of Colored People.

Last, and consistent with the approach encouraged through the National Disaster Recovery Framework and National Preparedness Goal, all grantees must consult with States, tribes, UGLGs, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area to ensure consistency of the action plan with applicable regional redevelopment plans. Grantees are encouraged to establish a recovery task force with representative members of each sector to advise the grantee on how its recovery activities can best contribute towards the goals of regional redevelopment plans.

7. *Overall benefit requirement.* The primary objective of the HCD Act is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income" (42 U.S.C. 5301(c)). To carry out this objective, the statute requires that 70 percent of the aggregate of CDBG program funds be used to support activities benefiting low- and moderate-income persons. In some prior disasters, the Secretary has waived the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR

570.484, and 24 CFR 570.200(a)(3) that 70 percent of funds be used for activities that benefit low- and moderate-income persons and, instead, established a 50 percent overall low- and moderate-income benefit requirement for a CDBG-DR grant. To ensure, however, that maximum assistance is provided initially to low- and moderate-income persons, the 70 percent overall benefit requirement shall remain in effect for this allocation, subject to a waiver request by an individual grantee to authorize a lower overall benefit for their CDBG-DR grant. A grantee's waiver requests are to be submitted to the grantee's designated HUD representative.

Grantees may seek to reduce the overall benefit requirement below 70 percent of the total grant, but must submit a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that low- and moderate-income persons' disaster-related needs have been sufficiently met and that the needs of non-low- and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

8. *Use of the "upper quartile" or "exception criteria" for low- and moderate-income area benefit activities.* Section 105(c)(2)(A) of the HCD Act generally provides that assisted activities designed to serve an area generally and clearly designed to meet identified needs of persons of low- and moderate-income in the area, shall be considered to principally benefit persons of low- and moderate-income if the area served in a metropolitan city or urban county is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income.

In some cases, HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than

51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile." A grantee qualifies for this exception when less than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more low- and moderate-income persons. In such communities, activities must serve an area that contains a percentage of low- and moderate-income residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee's census-block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. Disaster recovery grantees are required to use the most recent data available in implementing the exception criteria. The "exception criteria" apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by such criteria, including jurisdictions that receive disaster recovery funds from a State.

9. *Grant administration responsibilities and general administration cap.*

a. *Grantee responsibilities.* Each grantee shall administer its award directly, in compliance with all applicable laws and regulations. Each grantee shall be financially accountable for the use of all funds provided in this notice.

b. *General administration cap.* For all grantees under this notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant (plus program income) to be used for administrative costs, by the grantee, by entities designated by the grantee, by UGLGs, or by subrecipients. Thus, the total of all costs classified as administrative must be less than or equal to the 5 percent cap.

(1) *Combined technical assistance and administrative expenditures cap for States only.* For State grantees under this notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities

the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant, plus program income. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and program administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12). As a reminder, grantees may use CDBG-DR funds to develop a disaster recovery and response plan that addresses pre- and post-disaster hazard mitigation, if one does not currently exist (in accordance with paragraph (A)(1)(d)(4) of section VI of this notice).

(2) *Administrative expenditures cap for local governments.* Any city or county (UGLG) receiving a direct award under this notice is also subject to the 5 percent administrative cap. This 5 percent applies to all administrative costs—whether incurred by the grantee or its subrecipients. However, cities or counties receiving a direct allocation under this notice also remain limited to spending 20 percent of their total allocation on a combination of planning and program administration costs.

10. *Planning-only activities—applicable to State grantees only.* The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project-specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4).

The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of areawide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for

State grantees receiving an award under this notice, the Department is waiving the requirements at 24 CFR 570.483(b)(5) or (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-bligh national objective. Instead, States must comply with 24 CFR 570.208(d)(4) when funding disaster recovery-assisted, planning-only grants, or directly administering planning activities that guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

Grantees are therefore strongly encouraged to use their planning funds to create pre-disaster plans for long-term recovery. Plans should include an assessment of natural hazard risks, including risks expected to increase due to climate change, to low- and moderate-income residents based on an analysis of data and findings in (1) the National Climate Assessment (NCA),¹ the U.S. Climate Resilience Toolkit,² The Impact of Climate Change and Population Growth on the National Flood Insurance Program Through 2100,³ or the Community Resilience Planning Guide for Buildings and Infrastructure Systems prepared by the National Institute of Standards and Technology (NIST);⁴ or (2) other climate risk related data published by the Federal Government, or other State or local government climate risk related data, including FEMA-approved hazard mitigation plans that incorporate climate change; and (3) other climate risk data identified by the jurisdiction. For additional guidance also see: The Coastal Hazards Center's *State Disaster Recovery Planning Guide*⁵ and FEMA's *Guide on Effective Coordination of Recovery Resources for State, Tribal, Territorial and Local Incidents*.⁶

11. *Use of the urgent need national objective.* The CDBG certification requirements for documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this notice

until 24 months after HUD first obligates funds to the grantee. In the context of disaster recovery, these standard requirements may impede recovery. Since the Department only provides CDBG—DR awards to grantees with documented disaster-related impacts and each grantee is limited to spending funds only in the most impacted and distressed areas, the following streamlined alternative requirement recognizes the urgency in addressing serious threats to community welfare following a major disaster.

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, each grantee receiving a direct award under this notice must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. For each activity that will meet an urgent need national objective, grantees must reference in their action plan needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing.

Grantees should still be mindful to use the low- and moderate-income person benefit national objective for all activities that qualify under the criteria for that national objective. At least 70 percent of the entire CDBG—DR grant award must be used for activities that benefit low- and moderate-income persons (see section VI.A.7 of this notice for overall benefit requirement and instructions for seeking an alternative requirement to the 70-percent rule).

12. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.* Section 5302(a)(7) of title 42 U.S.C. (definition of “nonentitlement area”) and provisions of 24 CFR part 570 that would prohibit a State from distributing CDBG funds to entitlement communities and tribes under the CDBG program, are waived, including 24 CFR 570.480(a). Instead, the State may distribute funds to units of local government and tribes.

13. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls “subrecipients.” The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the

requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

14. *Recordkeeping.*

a. *State grantees.* When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG—DR funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the State; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

b. *UGLG grantees.* UGLGs remain subject to the recordkeeping requirements of 24 CFR 570.506.

15. *Change of use of real property—applicable to State grantees only.* This waiver conforms to the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to “unit of general local government” in 24 CFR 570.489(j), shall be read as “unit of general local government (UGLG) or State.”

16. *Responsibility for review and handling of noncompliance—applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this notice: The State shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and UGLGs, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended, as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated

¹ See <http://nca2014.globalchange.gov/highlights#submenu-highlights-overview>.

² See <https://toolkit.climate.gov>.

³ See http://www.acclimatise.uk.com/login/uploaded/resources/FEMA_NFIP_report.pdf.

⁴ See <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1197.pdf>.

⁵ http://coastalhazardscenter.org/dcl/wp-content/uploads/2012/05/State-Disaster-Recovery-Planning-Guide_2012.pdf.

⁶ <https://www.fema.gov/media-library/assets/documents/101940>.

subrecipients, public agencies, or UGLGs.

17. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility as described under this notice. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

a. Definition of program income.

(1) For purposes of this subpart, "program income" is defined as gross income generated from the use of CDBG-DR funds, except as provided in subparagraph D of this paragraph, and received by a State, UGLG, tribe or a subrecipient of a State, UGLG, or tribe. When income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used (e.g., a single loan supported by CDBG-DR funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-DR funds.

(b) Proceeds from the disposition of equipment purchased with CDBG-DR funds.

(c) Gross income from the use or rental of real or personal property acquired by a State, UGLG, or tribe or subrecipient of a State, UGLG, or tribe with CDBG-DR funds, less costs incidental to generation of the income (i.e., net income).

(d) Net income from the use or rental of real property owned by a State, UGLG, or tribe or subrecipient of a State, UGLG, or tribe, that was constructed or improved with CDBG-DR funds.

(e) Payments of principal and interest on loans made using CDBG-DR funds.

(f) Proceeds from the sale of loans made with CDBG-DR funds.

(g) Proceeds from the sale of obligations secured by loans made with CDBG-DR funds.

(h) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(i) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover

all or part of the CDBG-DR portion of a public improvement.

(j) Gross income paid to a State, UGLG, or tribe, or paid to a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-DR assistance.

(2) "Program income" does not include the following:

(a) The total amount of funds that is less than \$35,000 received in a single year and retained by a State, UGLG, tribe, or retained by a subrecipient thereof.

(b) Amounts generated by activities eligible under section 105(a)(15) of the HCD Act and carried out by an entity under the authority of section 105(a)(15) of the HCD Act.

b. *Retention of program income.* Per 24 CFR 570.504(c), a unit of government receiving a direct award under this notice may permit a subrecipient to retain program income. State grantees may permit a UGLG or tribe that receives or will receive program income to retain the program income, but are not required to do so.

c. Program income—use, close out, and transfer.

(1) Program income received (and retained, if applicable) before or after close out of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used in accordance with the grantee's action plan for disaster recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph D of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A grantee may transfer program income before close out of the grant that generated the program income to its annual CDBG program. In addition, State grantees may transfer program income before close out to any annual CDBG-funded activities carried out by a UGLG or tribe within the State. Program income received by a grantee, or received and retained by a subgrantee, after close out of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of this notice. Rather,

those funds will be subject to the grantee's regular CDBG program rules.

d. *Revolving loan funds.* UGLGs receiving a direct award under this notice, State grantees, and UGLGs or tribes (permitted by a State grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State grantees may also establish a revolving fund to distribute funds to UGLGs or tribes to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Note that no revolving fund established per this notice shall be directly funded or capitalized with CDBG-DR grant funds, pursuant to 24 CFR 570.489(f)(3).

18. *Reimbursement of disaster recovery expenses.* The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable costs incurred by itself or its recipients, subgrantees, or subrecipients (including public housing authorities (PHAs)) on or after the incident date of the covered disaster. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. Section 570.200(h)(1)(i) will not apply to the extent that it requires preagreement activities to be included in a consolidated plan. The Department expects both State and local government grantees to include all preagreement activities in their action plans. The provisions at 24 CFR 570.200(h) and 570.489(b) apply to grantees reimbursing costs incurred by itself or its recipients or subrecipients prior to the execution of a grant agreement with HUD. Additionally, grantees are permitted to charge to grants the preaward and preapplication costs of homeowners, businesses, and other qualifying entities for eligible costs they have incurred in response to an eligible disaster covered under this notice.

However, a grantee may not charge such preaward or preapplication costs to grants if the preaward or preapplication action results in an adverse impact to the environment. Grantees are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act (16 U.S.C. 1536) when designing a reimbursement program.

19. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.* Activities and projects assisted by CDBG-DR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and Section 104(d) requirements for grantees under this notice:

a. *One-for-one replacement.* One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out a program or activity that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for rehabilitation" in its action plan or in policies/procedures governing these programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD regional relocation specialist responsible for their State.

HUD is waiving the one-for-one replacement requirements because they do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement

may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

b. *Relocation assistance.* The section 104(d) relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

c. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that any tenants occupying real property that is acquired through voluntary purchase may be eligible for relocation assistance.

d. *Rental assistance to a displaced person.* The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the grantee to use 30 percent of a low-income, displaced person's household income in computing a rental assistance payment if the person had been paying rent in excess of 30 percent of household income without "demonstrable hardship" before the project. Thus, if a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, using 30 percent of household income to calculate the rental assistance would not be required. Before carrying out a program activity in which the grantee provides rental assistance payments to displaced persons, the grantee must define "demonstrable hardship" in its action plan or in the policies and procedures governing these programs and activities. The grantee's definition of demonstrable hardship applies when implementing these alternative requirements.

e. *Tenant-based rental assistance.* The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited.

f. *Moving expenses.* The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a grantee offer a displaced person the option to receive a fixed moving-cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the grantee must establish and offer the person a "moving expense and dislocation allowance" under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether

the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Without this waiver and alternative requirement, disaster recovery may be impeded by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established "moving expense and dislocation allowance."

g. *Optional relocation policies.* The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee or State recipient level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver makes clear grantees, including subrecipients, receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG-DR funds.

20. *Environmental requirements.*

a. *Clarifying note on the process for environmental release of funds when a State carries out activities directly.* Usually, a State distributes CDBG funds to UGLGs and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly, in addition to distributing funds to subrecipients and/or subgrantees. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the Certification and Request for Release of Funds to HUD for approval.

b. *Adoption of another agency's environmental review.* In accordance with the Appropriations Act, recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCD Act. The grantee must notify HUD in writing of its decision to adopt another agency's environmental review. The grantee must retain a copy of the

review in the grantee's environmental records.

c. *Unified Federal Review.* The Sandy Recovery Improvement Act was signed into law on January 29, 2013, and directed the Administration to "establish an expedited and unified interagency review process (UFR) to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law." The process aims to coordinate environmental and historic preservation reviews to expedite planning and decisionmaking for disaster recovery projects. This can improve the Federal Government's assistance to States, local, and tribal governments; communities; families; and individual citizens as they recover from future presidentially declared disasters. Tools for the UFR process can be found at here: <http://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters>.

d. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with allocations under this notice if the recipient has adopted an environmental review, approval, or permit under subparagraph b above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

e. *Historic preservation reviews.*

To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional, and support the capacity of the State Historic Preservation Officer/Tribal Historic Preservation Officer to review CDBG-DR projects. For more information on qualified historic preservation professional standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

21. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other

source. To comply with this law and the limitation on the use of CDBG-DR funds under the Appropriations Act for necessary expenses, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Grantees are subject to the requirements of a separate notice explaining the duplication of benefit requirements (76 FR 71060, published November 16, 2011). As a reminder, and as noted in the November 16, 2011, notice, at section VI, paragraph B, CDBG-DR funds may not be used to pay down an SBA home or business loan. Additionally, this notice does not require households and businesses to apply for SBA assistance prior to applying for CDBG-DR assistance. However, CDBG-DR grantees may institute an SBA application requirement in order to target assistance to households and businesses with the greatest need.

22. *Procurement.*

a. *State grantees.* Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Additionally, States and State subgrantees (UGLGs and subrecipients) shall follow requirements of 24 CFR 570.489(g). HUD is imposing a waiver and alternative requirement to require the State to establish requirements for procurement policies and procedures based on full and open competition for subrecipients in addition to UGLGs.

The State can comply with the requirement under 24 CFR 570.489(g) to follow its procurement policies and procedures and establish procurement requirements for its UGLGs and subrecipients in one of three ways (subject to 2 CFR 200.110, as applicable):

i. A State can follow its existing procurement policies and procedures and establish requirements for procurement policies and procedures for UGLGs and subrecipients, based on full and open competition, that specify methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability;

ii. A State can adopt 2 CFR 200.317, which requires the State to follow the same policies and procedures it uses for procurements from its non-Federal funds and comply with 2 CFR 200.322 (procurement of recovered materials) and 2 CFR 200.326 (required contract provisions), but requires the State to make its subrecipients and UGLGs

follow 2 CFR 200.318 through 200.326; or

iii. A State can adopt the provisions that apply to CDBG entitlement grantees (2 CFR 200.318 through 2 CFR 200.326) for itself and its subgrantees (subrecipients and UGLs).

b. *Direct grants to UGLs.* Any UGLs receiving a direct appropriation under today's notice is subject to procurement requirements in the Uniform Administrative Requirements at 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable).

c. *Additional requirements related to procurement (States and local governments).* HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a procurement process to perform specific functions, consistent with the procurement requirements in the CDBG program regulations; a subrecipient is not a contractor. For contractors employed to provide discrete services or deliverables only, HUD is establishing an additional alternative requirement to expand on existing provisions of 2 CFR 200.317 through 200.326 and 24 CFR 570.489(g) as follows: (1) Grantees are also required to ensure all contracts and agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or date of completion. (2) Grantees must incorporate performance requirements and penalties into each procured contract or agreement. Contracts that describe work performed by general management consulting services need not adhere to this requirement. (3) Grantees may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy development, and financial management. HUD will respond to grantee requests for technical assistance on contracting and procurement processes.

23. *Public Web site.* HUD is requiring grantees to maintain a public Web site that provides information accounting for how all grant funds are used, and managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its Web site: The Action Plan (including all amendments); each QPR (as created using the DRGR system); procurement policies and procedures; status of services or goods currently being procured by the grantee (e.g., phase of

the procurement, requirements for proposals, etc.) a copy of contracts the grantee has procured directly; and a summary of all procured contracts, including those procured by the grantee, recipients, or subrecipients. Grantees should post only those contracts subject to 24 CFR 85.36 or in accordance with the State's procurement policies. To assist grantees in preparing this summary, HUD has developed a template. The template can be accessed at: <https://www.onecpd.info/cdbg-dr/>. Grantees are required to use this template, and attach an updated version to the DRGR system each quarter as part of their QPR submissions. Updated summaries must also be posted quarterly on each grantee's Web site.

24. *Timely distribution of funds.* The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements under this notice. Grantees must expend 100 percent of their allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

25. *Review of continuing capacity to carry out CDBG-funded activities in a timely manner.* If HUD determines that the grantee has not carried out its CDBG activities and certifications in accordance with the requirements in this notice, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply the corrective and remedial actions specified in paragraph 26 of this notice.

26. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG-DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) of the HCD Act to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

27. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a CDBG-DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation.

Consistent with the procedures described in this notice, the Department may adjust, reduce, or withdraw the CDBG-DR grant or take other actions as appropriate, except for funds that have expended for eligible approved activities.

B. Housing and Related Floodplain Issues

28. *Housing-related eligibility waivers.* The broadening of eligible activities under the HCD Act is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this notice.

Therefore, 42 U.S.C. 5305(a)(24) is waived to the extent necessary to allow: (1) Homeownership assistance for households with up to 120 percent of the area median income and (2) down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)). While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

In addition, 42 U.S.C. 5305(a) is waived and alternative requirements adopted to the extent necessary to permit new housing construction, and to require the following construction standards on structures constructed or rehabilitated with CDBG-DR funds as part of activities eligible under 42 U.S.C. 5305(a). All references to "substantial damage" and "substantial improvement" shall be as defined in 44 CFR 59.1 unless otherwise noted:

a. *Green Building Standard for Replacement and New Construction of Residential Housing.* Grantees must meet the Green Building Standard in this subparagraph for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (i.e., demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring

systems, columns, or load bearing interior or exterior walls.

b. *Meaning of Green Building Standard.* For purposes of this notice, the Green Building Standard means the grantee will require that all construction covered by subparagraph a, above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program.

c. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation other than that described in subparagraph (a), above, grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>. Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (e.g., faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

d. *Implementation of green building standards.* (i) For construction projects completed, under construction, or under contract prior to the date that assistance is approved for the project, the grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required; (ii) for specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

e. *Elevation standards for new construction, repair of substantial damage, or substantial improvement.* The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1). All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 1 percent annual floodplain. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

f. *Broadband infrastructure in housing.* Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than four rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the grantee documents that: (i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (ii) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (iii) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

g. *Resilient Home Construction Standard.* Grantees are strongly encouraged to incorporate a Resilient Home Construction Standard, meaning that all construction covered by subparagraph (a) meet an industry-recognized standard such as those set by the FORTIFIED Home™ Gold level for new construction of single-family, detached homes; and FORTIFIED Home™ Silver level for reconstruction of the roof, windows and doors; or FORTIFIED Home™ Bronze level for repair or reconstruction of the roof; or

any other equivalent comprehensive resilient or disaster resistant building program. Further, grantees are strongly encouraged to meet the FORTIFIED Home™ Bronze level standard for roof repair or reconstruction, for all construction covered under subparagraph c. FORTIFIED Home™ is a risk-reduction program providing construction standards for new homes and retrofit standards for existing homes, which will increase a home's resilience to natural hazards, including high wind, hail, and tropical storms. Insurers can provide discounts for homeowner's insurance for properties certified as FORTIFIED. Property owners and grantees are encouraged to contact their insurance agent for current information on what discounts may be available. More information is also available at <https://disastersafety.org/fortified/fortified-home/>.

29. *Addressing Unmet Public Housing Needs.* The grantee must identify how it will address the rehabilitation, mitigation, and new construction needs of each disaster-impacted PHA within its jurisdiction, if applicable. The grantee must work directly with impacted PHAs in identifying necessary and reasonable costs and ensure that adequate funding from all available sources is dedicated to addressing the unmet needs of damaged public housing (e.g., FEMA, insurance, and funds available from HUD's Office of Public and Indian Housing. In the rehabilitation, reconstruction and replacement of public housing provided for in the action plan pursuant to paragraph A.1.a.7 of section VI of this notice, each grantee must identify funding to specifically address the unmet needs described in this subparagraph. Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG-DR funds to assist public housing. Information on the PHAs impacted by the disaster is available on the Department's Web site.

30. *Housing incentives in disaster-affected communities.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the

extent necessary to allow the provision of housing incentives. These grantees must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved action plan and published program design(s). This waiver does not permit a compensation program. If the grantee requires the incentives to be used for a particular purpose by the household receiving the assistance, then the eligible use for that activity will be that required use, not an incentive.

In undertaking a larger scale migration or relocation recovery effort that is intended to move households out of high-risk areas, grantees should consider how it can protect and sustain the impacted community and its assets. Grantees must also weigh the benefits and costs, including anticipated insurance costs, of redeveloping high-risk areas that were impacted by a disaster. Accordingly, grantees are prohibited from offering incentives to return households to disaster-impacted floodplains, unless the grantee can demonstrate to HUD how it will resettle such areas to mitigate against the risks of future disasters and the insurance costs of continued occupation of high-risk areas, through mechanisms that can reduce risks and insurance costs, such as new land use development plans, building codes or construction requirements, protective infrastructure development, or through restrictions on future disaster assistance to such properties.

31. *Limitation on emergency grant payments—interim mortgage assistance.* 42 U.S.C. 5305(a)(8) is modified to extend interim mortgage assistance to qualified individuals from 3 months to up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond 3 months, during which mortgage payments may be due but the home is uninhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing rehabilitation payments to expedite recovery assistance to homeowners, but must establish performance milestones for the rehabilitation that are to be met by the homeowner in order to receive such payments. A grantee using this

alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

32. *Acquisition of real property; flood and other buyouts.* Grantees under this notice are able to carry out property acquisition for a variety of purposes. However, the term "buyouts" as referenced in this notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas as designated by the grantee. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

Grantees are encouraged to use buyouts strategically, as a means of acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices. To the maximum extent practicable, grantees should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program.

a. Clarification of "Buyout" and "Real Property Acquisition" activities.

Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-DR funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG-DR assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides post-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG-DR assistance.

Regardless of purchase price, all buyout activities are a type of acquisition of real property (as permitted by section 105(a)(1) of the HCD Act). However, only acquisitions that meet the definition of a "buyout"

are subject to the post-acquisition land use restrictions imposed by the applicable prior notices. The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk from future flooding or to reduce the risk from the hazard that lead to the property's Disaster Risk Reduction Area designation. To conduct a buyout in a Disaster Risk Reduction Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-DR allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

The distinction between buyouts and other types of acquisitions is important, because grantees may only redevelop an acquired property if the property is not acquired through a buyout program (*i.e.*, the purpose of acquisition was something other than risk reduction).

When acquisitions are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (and the pre-disaster FMV may not be used).

a. Buyout requirements:

1. Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

2. No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) A public facility that is open on all sides and functionally related to a designated open space (*e.g.*, a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

3. After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or

relocation program, no subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the recipient to any Federal entity in perpetuity.

The entity acquiring the property may lease it to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold. In all cases, a deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.

4. Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG-DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses.

5. All buyout activities must be classified using the "buyout" activity type in the DRGR system.

6. Any State grantee implementing a buyout program or activity must consult with affected UGLs.

7. When undertaking buyout activities, in order to demonstrate that a buyout meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCD Act and applicable regulatory criteria described below. Grantees are encouraged to consult with HUD prior to undertaking a buyout program with the intent of using the LMH national objective. Section 105(c)(3) of the HCD Act (42 U.S.C. 5305(c)(3)) provides that any assisted activity under this chapter that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low- and moderate-income only to the extent such housing will, upon completion, be occupied by such persons. In addition, the State CDBG regulations at 24 CFR 570.483(b)(3) and entitlement CDBG regulations at 24 CFR 570.208(a)(3) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low- and moderate-income households. Therefore, a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective. Buyout programs that assist low- and moderate-income persons can

be structured in one of the following ways: (a) The buyout program combines the acquisition of properties with another direct benefit—Low- and Moderate-Income housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria in 24 CFR part 570 (e.g., if the structure contains more than two dwelling units, at least 51 percent of the units must be occupied by low- and moderate-income households. (b) The program meets the low- and moderate income area benefit criteria to demonstrate national objective compliance, provided that the grantee can document that the properties acquired through buyouts will be used in a way that benefits all of the residents in a particular area where at least 51 percent of the residents are low- and moderate-income persons. When using the area benefit approach, grantees must define the service area based on the end use of the buyout properties. (c) The program meets the criteria for the low- and moderate-income limited clientele national objective, including the prohibition on the use of the limited clientele national objective when an activity's benefits are available to all residents of the area. A buyout program could meet the national objective criteria for the limited clientele national objective if it restricts buyout program eligibility to exclusively low- and moderate-income persons, and the buyout provides an actual benefit to the low- and moderate income sellers by providing pre-disaster valuation uniformly to those who participate in the program.

c. Redevelopment of acquired properties.

1. Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. (see subparagraph a.2 above).

2. Grantees may redevelop an acquired property if: (a) The property is not acquired through a buyout program and (b) the purchase price is based on the property's post-disaster value, consistent with applicable cost principles (the pre-disaster value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

3. In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans.

33. *Alternative requirement for housing rehabilitation—assistance for second homes.* The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG-DR buyout program (as defined by this notice). "Second homes" are defined in IRS Publication 936 (mortgage interest deductions).

34. *Flood insurance.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's Web site.

a. Flood insurance purchase requirements. HUD does not prohibit the use of CDBG-DR funds for existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain). However, Federal, State, local, and tribal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. HUD also recommends the purchase of flood insurance outside of a Special Flood Hazard Area for properties that have been damaged by a flood, to better protect property owners from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future, but this is not a requirement.

b. Future Federal assistance to owners remaining in a floodplain.

1. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment)

to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. This means that a grantee may not provide disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

2. Section 582 also implies a responsibility for a grantee that receives CDBG-DR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at <http://uscode.house.gov/view.xhtml?req=granuleid:U.S.C.-prelim-title42-section5154a&num=0&edition=prelim>.

C. Infrastructure (Public Facilities, Public Improvements, Public Buildings)

35. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow grantees to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible. HUD believes this waiver is consistent with the overall purposes of the HCD Act, and is necessary for many grantees to adequately address critical infrastructure needs created by the disaster.

36. *Elevation of Nonresidential Structures.* Nonresidential structures must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 1 percent annual floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be

elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

37. *Use of CDBG as Match.* Additionally, as provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE). By law, the amount of CDBG-DR funds that may be contributed to a USACE project is \$250,000 or less. However, the Appropriations Act prohibits use of funds for any activity reimbursable by, or for which funds are made available by FEMA or USACE.

D. Economic Revitalization

38. *National Objective Documentation for Economic Revitalization Activities.*

24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this notice to identify the low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., the number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG-DR grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons.

39. *Public benefit for certain Economic Revitalization activities.* The public benefit provisions set standards for individual economic revitalization activities (such as a single loan to a business) and for economic revitalization activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-

income person to which goods or services are provided by the activity. These dollar thresholds were set two decades ago and can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

This notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (f)(2), (f)(3), (f)(4)(i), (f)(5), and (f)(6), and 24 CFR 570.209(b)(1), (b)(2), (b)(3)(i), and (b)(4), for economic revitalization activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Paragraph (g) of 24 CFR 570.482, and 24 CFR 570.209(c), and (d) are also waived to the extent these provisions are related to public benefit.

40. *Clarifying note on Section 3 resident eligibility and documentation requirements.* The definition of "low-income persons" in 12 U.S.C. 1701u and 24 CFR 135.5 is the basis for eligibility as a section 3 resident. This notice authorizes grantees to determine that an individual is eligible to be considered a section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction. This authority does not impact other section 3 resident eligibility requirements in 24 CFR 135.5. All direct recipients of CDBG-DR funding must submit form HUD-60002 annually through the Section 3 Performance Evaluation and Registry System (SPEARS) which can be found on HUD's Web site.

41. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482 are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a

labor market area within the same State to continue business.

42. *Prioritizing small businesses.* To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to require grantees to prioritize assisting businesses that meet the definition of a small business as defined by SBA at 13 CFR part 121 or, for businesses engaged in "farming operations" as defined at 7 CFR 1400.3, and that meet the United States Department of Agriculture Farm Service Agency (FSA), criteria that are described at 7 CFR 1400.500, which are used by the FSA to determine eligibility for certain assistance programs.

43. *Prohibiting assistance to private utilities.* Funds made available under this notice may not be used to assist a privately owned utility for any purpose.

E. Certifications and Collection of Information

44. *Certifications waiver and alternative requirement.* Sections 91.225 and 91.325 of title 24 of the Code of Federal Regulations are waived. Each State or UGLG receiving a direct award under this notice must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

c. The grantee certifies that the action plan for Disaster Recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG-DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice. The grantee certifies that activities to be undertaken with funds under this notice are consistent with its action plan.

d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this notice.

e. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12

U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

f. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each UGLG receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

g. Each State receiving a direct award under this notice certifies that it has consulted with affected UGLGs in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

h. The grantee certifies that it is complying with each of the following criteria:

1. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in 2015 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) related to the consequences of Hurricane Joaquin and adjacent storm systems, Hurricane Patricia, and other flood events.

2. With respect to activities expected to be assisted with CDBG-DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

3. The aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the grant amount is expended for activities that benefit such persons.

4. The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG-DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) Disaster recovery grant funds are used to pay the

proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations, and that it will affirmatively further fair housing.

j. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, States receiving a direct award must certify that they will require UGLGs that receive grant funds to certify that they have adopted and are enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

k. Each State or UGLG receiving a direct award under this notice certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements of this notice and requirements of Public Law 114-113 applicable to funds allocated by this notice, and certifies to the accuracy of Risk Analysis Documentation submitted to demonstrate that it has in place proficient financial controls and procurement processes; that it has adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds; that it has to maintain a comprehensive disaster recovery Web site to ensure timely communication of application status to applicants for disaster recovery assistance, and that its implementation plan accurately describes its current capacity and how it will address any capacity gaps.

l. The grantee certifies that it will not use CDBG-DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning

purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the State, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

m. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

n. The grantee certifies that it will comply with applicable laws.

VII. Duration of Funding

The Appropriations Act directs that these funds be available until expended. However, in accordance with 31 U.S.C. 1555, HUD shall close the appropriation account and cancel any remaining obligated or unobligated balance if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for 2 consecutive fiscal years. In such case, the funds shall not be available for obligation or expenditure for any purpose after the account is closed.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing-

or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: June 8, 2016.

Nani A. Coloretto,
Deputy Secretary.

Appendix A—Allocation of CDBG-DR Funds as a Result of 2015 Flooding Disasters

This section describes the methods behind HUD's allocation of \$300 million in the 2015 CDBG-DR Funds.

Section 420 (Division L, Title II) of Public Law 114-113, enacted on December 18, 2015, appropriates \$300 million through the Community Development Block Grant (CDBG) program for necessary expenses for authorized activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2015 related to the consequences of Hurricane Joaquin and adjacent storm systems, Hurricane Patricia, and other flood events. This section requires that funds be awarded directly to the State or unit of general local government at the discretion of the Secretary.

The key underlying metric used in the allocation process is the unmet need that remains to be addressed from qualifying disasters. Unmet needs related to infrastructure and to damage to businesses and housing are used first to determine the most impacted and distressed areas that are eligible for grants and then to determine the amount of funding to be made available to each grantee.

Methods for estimating unmet needs for business, infrastructure, and housing: The data HUD staff have identified as being available to calculate unmet needs for qualifying disasters come from the following data sources:

- FEMA Individual Assistance program data on housing-unit damage as of December 21, 2015;
- SBA for management of its disaster assistance loan program for housing repair and replacement as of January 13, 2016;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss as of January 13, 2016; and
- FEMA-estimated and -obligated amounts under its Public Assistance program for permanent work, Federal and State cost share as of February 3, 2016.

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by SBA data from its Disaster Loan Program. HUD calculates "unmet housing needs" as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

• Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

- Minor-Low: Less than \$3,000 of FEMA-inspected *real property* damage.
- Minor-High: \$3,000 to \$7,999 of FEMA-inspected *real property* damage.
- Major-Low: \$8,000 to \$14,999 of FEMA-inspected *real property* damage and/or 1 to 4 feet of flooding on the first floor.
- Major-High: \$15,000 to \$28,800 of FEMA-inspected *real property* damage and/or 4 to 6 feet of flooding on the first floor.
- Severe: Greater than \$28,800 of FEMA-inspected *real property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of "most impacted," homes are determined to have a serious level of damage if they have damage of "major-low" or higher. That is, they have a real property, FEMA-inspected damage of \$8,000 or flooding over 1 foot. Furthermore, a homeowner is determined to have unmet needs if the homeowner received a FEMA grant to make home repairs. For homeowners with a FEMA grant and insurance for the covered event, HUD assumes that the unmet need "gap" is 20 percent of the difference between total damage and the FEMA grant.

• FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected rental units are categorized by HUD into one of five categories:

- Minor-Low: Less than \$1,000 of FEMA-inspected *personal property* damage.
- Minor-High: \$1,000 to \$1,999 of FEMA-inspected *personal property* damage.
- Major-Low: \$2,000 to \$3,499 of FEMA-inspected *personal property* damage and/or 1 to 4 feet of flooding on the first floor.
- Major-High: \$3,500 to \$7,499 of FEMA-inspected *personal property* damage and/or 4 to 6 feet of flooding on the first floor.
- Severe: Greater than \$7,500 of FEMA-inspected *personal property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of "most impacted," homes are determined to have a high level of damage if they have damage of "major-low" or higher. That is, they have a FEMA personal property damage assessment of \$2,000 or greater or flooding over 1 foot. Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income of \$30,000 or less. Units occupied by a tenant with income less than \$30,000 are used to calculate likely unmet needs for affordable rental housing. For those units occupied by tenants with incomes under \$30,000, HUD estimates unmet needs as 75 percent of the estimated repair cost.

• The average cost to fully repair a home *to code* for a specific disaster within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the SBA for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more

than the FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.

Calculating Unmet Infrastructure Needs

- To best proxy unmet infrastructure needs, HUD uses data from FEMA's Public Assistance program on the State match requirement (usually 25 percent of the estimated public assistance needs). This allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and State match requirement. Those activities are categories: C, Roads and Bridges; D, Water Control Facilities; E, Public Buildings; F, Public Utilities; and G, Recreational—Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used. Because Public Assistance damage estimates are available only Statewide (and not county), CDBG funding allocated by the estimate of unmet infrastructure needs are suballocated to counties and local jurisdictions based on each jurisdiction's proportion of unmet housing and business needs.

Calculating Economic Revitalization Needs

- Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster for which content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a State had 160 applications for assistance, 150 had calculated needs and 10 were denied in the preprocessing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as $(1 + 10/160)$ multiplied by the calculated unmet real content loss.
- Because applications denied for poor credit or income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each State are adjusted upwards by the proportion of total applications that were denied at the preprocess stage because of poor credit or inability to show repayment ability. Similar to housing, estimated damage is used to determine what unmet needs will be counted as serious unmet needs. Only properties with total real estate and content loss in excess of \$30,000 are considered serious damage for purposes of identifying the most impacted areas.

- Category 1: real estate + content loss = below 12,000.
- Category 2: real estate + content loss = 12,000–30,000.

- Category 3: real estate + content loss = 30,000–65,000.

- Category 4: real estate + content loss = 65,000–150,000.

- Category 5: real estate + content loss = above 150,000.

- To obtain unmet business needs, the amount for approved SBA loans is subtracted out of the total estimated damage.

Most Impacted and Distressed Designation

HUD allocates funds based on its estimate of the total unmet needs for infrastructure and the unmet needs for serious damage to businesses and housing that remain to be addressed in the most impacted counties after taking into account the most recent available data on insurance, FEMA assistance, and SBA disaster loans. To meet the statutory requirement that the funds be targeted to "the most impacted or distressed areas," this allocation:

- Limits allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive Individual Assistance (IA) or Individual and Housing Program (IHP) funding.
- Only accounts for homes and businesses that experienced damage categorized as "major-low" or higher (see definitions above). That is, it excludes homes and businesses with minor damage that may have some unmet needs remaining.
- Restricts funding only to States with substantially higher unmet needs than other States impacted by disasters. Among disasters with data meeting the first two thresholds, HUD identifies a natural break in calculated serious unmet recovery needs and funds only grantees within those States.
- Only includes housing and business unmet needs data toward a formula allocation if HUD calculated serious unmet housing and business needs for a county is in excess of a Most Impacted threshold. Specifically, only counties with \$7 million or more in serious unmet housing and business needs are used to determine a State's allocation. Thus, funding is provided based on the serious needs of the most impacted counties in each State.
- Factors in disaster-related infrastructure repair costs Statewide that are not reimbursed by FEMA Public Assistance. For all of these disasters, this is calculated as the 25 percent State match requirement.
- Specifies the counties and jurisdictions that are most impacted or distressed by:
 - Providing direct funding to CDBG entitlement jurisdictions with significant remaining serious unmet needs. Within a State, if an entitlement jurisdiction accounts for \$15 million or more of the funding allocated to the State, it is allocated a direct grant.
 - Directing that a minimum of 80 percent of the total funds allocated within a State, including those allocated directly to the State and to local governments, must be spent on the disaster recovery needs of the communities and individuals in the most impacted and distressed counties (i.e., those counties identified by HUD). The principle behind the 80 percent rule is that each State received its allocation based on the unmet

needs in the HUD-identified most impacted counties (those counties with more than \$7 million in serious unmet housing and business needs) and, thus, HUD will require that all grantees within a State direct these limited resources toward those most impacted counties. Nonetheless, HUD recognizes that there are likely circumstances where its data is incomplete, damage is highly localized outside of one of the heavily impacted counties, or recovery would otherwise benefit from expenditures outside of those most impacted counties and, thus provides some flexibility to address those needs for State grantees. While local governments receiving direct grant allocations from HUD must spend their total grant within their own jurisdictions, HUD will allow a portion of the State nonentitlement grant to be spent outside of the most impacted counties, in an amount not to exceed that which yields 80 percent of all funding within a State to be spent in the most impacted counties.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total serious unmet recovery needs as the aggregate of:

- Serious unmet housing needs in most impacted counties.
- Serious unmet business needs in most impacted counties.
- The estimated local match requirement for the repair of infrastructure estimated for FEMA's Public Assistance program. Given the relatively late timing of several disasters in 2015, this information is generally available only at the State level and not yet at county level geography. HUD estimates a local government share of public assistance unmet need as proportional to their serious housing and business unmet needs.

Each State receives funding based on all of the infrastructure needs within the State, minus the infrastructure needs estimated to lie within entitlement jurisdictions receiving direct grants. In addition, each State also receives funding from all serious housing and business needs in the most impacted counties minus the estimated severe housing and business needs within entitlement jurisdictions receiving direct grants.

Special Note About Participating Jurisdictions Within Urban Counties

The formula allocations to entitlement jurisdictions are based on the geography that those jurisdictions serve in their regular CDBG program. Urban Counties are comprised of the balance of a county after subtracting out any CDBG entitlement cities and any incorporated towns or cities that choose to participate with the State government. If an incorporated town or city crosses two Urban County boundaries, it may choose the Urban County with which it will participate and the data from the town in the adjoining county would be included in the chosen county's allocation.

The formula allocation for the grant to the State government reflect both the nonentitled

portions of the State under the regular CDBG program and all of the other areas of the most impacted counties not covered by the CDBG entitlement communities getting a direct grant. For example, the geography served by Livingston County, South Carolina includes one or more communities that cross over into Richland County, South Carolina. Because those communities participate with the Livingston County CDBG program and not the Richland County CDBG program, their need is reflected in the award to Livingston County. In addition, a number of incorporated towns in Richland County are served by the State CDBG program and the data for those communities were factored into the grant to the South Carolina State government and not the grant to the Richland County Urban County.

[FR Doc. 2016-14110 Filed 6-16-16; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16CD00B951000]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a revision of a currently approved information collection (1028-0097).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on October 31, 2016.

DATES: To ensure that your comments are considered, we must receive them on or before August 16, 2016.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648-7197 (fax); or gs-info_collections@usgs.gov (email). Please reference "Information Collection 1028-0097, State Water Resources Research Institute Program Annual Application, National Competitive Grants and Reporting" in all correspondence.

FOR FURTHER INFORMATION CONTACT: Earl Greene, Chief, Office of External

Research, U.S. Geological Survey, 5522 Research Park Drive, Baltimore, MD 21228 (mail); 443-498-5505 (phone); eagreene@usgs.gov (email). You may also find information about this ICR at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 *et seq.*), authorizes a research institute water resources or center in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and American Samoa. There are currently 54 such institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The institute in Guam is a regional institute serving Guam, the Federated States of Micronesia, and the Commonwealth of the Northern Mariana Islands. Each of the 54 institutes submits an annual application for an allotment grant, national competitive grants, and provides an annual report on its activities under the grant. The State Water Resources Research Institute Program issues an annual call for applications from the institutes to support plans to promote research, training, information dissemination, and other activities meeting the needs of the States and Nation. The State Water Resources Research Institute Program also issues an annual call for competitive grants to focus on water problems and issues of a regional or interstate nature beyond those of concern only to a single State. The U.S. Geological Survey has been designated as the administrator of the provisions of the Act.

II. Data

OMB Control Number: 1028-0097.
Form Number: NA.

Title: State Water Resources Research Institute Program Annual Application, National Competitive Grants and Reporting.

Type of Request: Extension of a currently approved collection.

Affected Public: The state water resources research institutes authorized by the Water Resources Research Act of 1983, as amended, and listed at <http://water.usgs.gov/wrri/index.php>.

Respondent's Obligation: Necessary to obtain benefits.

Frequency of Collection: Annually.

Estimated Total Number of Annual Responses: We expect to receive 54 applications and award 54 grants per year from State and local governments

for the annual applications. We also expect to receive 65 applications from individuals and award 4 grants per year for the national competitive grants.

Estimated Time per Response: 10,320 hours. This includes 100 hours per government applicant to prepare and submit the annual application; 40 hours per individual applicant to prepare and submit the national competitive grant application and 40 hours (total) per grantee to complete the annual reports.

Estimated Annual Burden Hours: 10,320.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Earl A. Greene,

Chief, Office of External Research.

[FR Doc. 2016-14365 Filed 6-16-16; 8:45 am]

BILLING CODE 4338-11-P



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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2017-0124]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0057

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting a Reinstatement, without change, of a previously approved collection for which approval has expired for the following collection of information: 1625-0057, Small Passenger Vessels—Title 46 Subchapters K and T without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 6, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2017-0124] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public participation and request for comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593-7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains

information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2017-0124], and must be received by October 6, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the *Federal Register* (70 FR 15086).

Information Collection Request

Title: Small Passenger Vessels—Title 46 Subchapters K and T.

OMB Control Number: 1625-0057.

Summary: The information requirements are necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Need: Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribed regulations for the design, construction, alteration, repair and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

Forms: CG-841, Certificate of Inspection; CG-854, Temporary Certificate of Inspection; CG-948, Permit to Proceed to Another Port for Repairs; CG-949, Permit to Carry Excursion Party; CG-3752, Application for Inspection of U.S. Vessel; CG-5256, U.S. Coast Guard Inspected Small Passenger Vessel.

Respondents: Owners and operators of small passenger vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 399,420 hours to 397,124 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 1, 2017.

Marilyn L. Scott-Perez,
U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2017-16505 Filed 8-4-17; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6039-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice provides guidance on issues arising from Community Development Block Grant disaster recovery (CDBG-DR) funds.

Specifically, this notice allocates additional funds for 2015 and 2016 disasters; establishes an allocation framework for disasters that occur in 2017 and later; provides waivers for previously funded National Disaster Resilience Competition grants and for grantees that received certain CDBG-DR funding; provides a waiver for Rebuild By Design activities; and establishes an alternative requirement that creates new national objective criteria for grantees undertaking CDBG-DR buyouts and housing incentives.

DATES: This notice will apply on: August 14, 2017.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number

via TTY by calling the Federal Relay Service at (800) 877-8339. Facsimile inquiries may be sent to Mr. Gimont at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

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I. 2015 and 2016 Allocations

A. Background

Since December 2015, four different public laws have been enacted that have provided CDBG-DR appropriations to address major declared disasters that occurred in 2015, 2016, 2017, and later. Table 1 lists these various public laws, the related **Federal Register** notices that govern the funds, grantees that have received allocations, and amounts provided to those grantees.

Table 1 – FY 2016 and 2017 CDBG-DR Appropriations and Allocations

Appropriation Act	Public Law 114-113	Public Law 114-223	Public Law 114-254	Public Law 115-31	
Date of Enactment	December 18, 2015	September 29, 2016	December 10, 2016	May 5, 2017	
Date of Applicable Federal Register Notice	June 17, 2016	November 21, 2016	January 18, 2017		
Federal Register Notice Reference Number	81 FR 39687	81 FR 83254	82 FR 5591		
CDBG-DR Available	\$299,000,000	\$500,000,000	\$1,805,976,000	\$400,000,000	
2015 Disaster Grantees					Totals
Lexington County SC	\$16,332,000			\$5,038,000	\$21,370,000
Columbia SC	\$19,989,000			\$6,166,000	\$26,155,000
Richland County, SC	\$23,516,000			\$7,254,000	\$30,770,000
State of South Carolina	\$96,827,000			\$29,871,000	\$126,698,000
Houston, TX	\$66,560,000			\$20,532,000	\$87,092,000
San Marcos, TX	\$25,080,000			\$8,714,000	\$33,794,000
State of Texas	\$50,696,000			\$23,872,000	\$74,568,000
2016 Disaster Grantees					
State of Louisiana		\$437,800,000	\$1,219,172,000	\$51,435,000	\$1,708,407,000
State of West Virginia		\$17,000,000	\$87,280,000	\$45,595,000	\$149,875,000
State of Texas		\$45,200,000	\$177,064,000	\$16,631,000	\$238,895,000
State of North Carolina			\$198,553,000	\$37,976,000	\$236,529,000
State of South Carolina			\$65,305,000	\$29,781,000	\$95,086,000
State of Florida			\$58,602,000	\$59,335,000	\$117,937,000
Total	\$299,000,000	\$500,000,000	\$1,805,976,000	\$342,200,000	

*The allocation amounts for Pub. L. 115-31 column include amounts announced by the Department on May 18, 2017.

Each of the public laws identified above provides CDBG-DR funds for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a qualifying major disaster declared by the President pursuant to

the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (Stafford Act) (42 U.S.C. 5121 et seq.).

CDBG-DR grants under each appropriation are governed by one or more **Federal Register** notices that contain the requirements, applicable waivers, and alternative requirements that apply to the use of the funds. Congress requires that HUD publish waivers and alternative requirements in the **Federal Register**.

This **Federal Register** notice sets out the requirements, waivers, and alternative requirements that govern the funds appropriated under Public Law 115-31. Throughout this notice, references to **Federal Register** notices will be to the date the notices were published as noted in Table 1.

Under Public Law 115-31, Congress appropriated \$400 million in CDBG-DR funding to address remaining unmet needs (as defined by HUD) arising from qualifying major disasters that occurred

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in 2015 and 2016, and for qualifying major disasters that occur in 2017 or later, until the funds are fully allocated. Congress required that HUD, in distributing the \$400 million, use the allocation methodologies identified in June 17, 2016, and January 18, 2017, Federal Register notices for disasters occurring in 2015 and 2016, respectively.

Table 1, under the column labeled Public Law 115–31, reflects the allocation of funds appropriated by that act for qualifying disasters in 2015 and 2016 (inclusive of the amounts announced on May 18, 2017). In HUD's June 17, 2016, Federal Register notice, HUD described the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying 2015 disasters. Grantees receiving an

allocation of funds under this Federal Register notice for qualifying 2015 disasters are subject to the authority and conditions of Public Law 114–113 and the requirements, waivers, and alternative requirements provided in the June 17, 2016, notice.

In HUD's November 21, 2016, and January 18, 2017, Federal Register notices, HUD described the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying 2016 disasters. Grantees receiving allocations of funds under these Federal Register notices for qualifying 2016 disasters are subject to the authority and conditions of Public Law 114–223 and 114–254 and the requirements, waivers and alternative requirements provided in the November 21, 2016, and January 18, 2017, Federal Register notices.

HUD is allocating the funds for the 2015 and 2016 disasters based on updated data HUD received from the Federal Emergency Management Agency (FEMA), and the Small Business Administration (SBA). HUD's allocations match the difference between HUD's 100 percent estimate of the serious unmet needs for repair in most impacted counties after taking into consideration other resources, including insurance, FEMA, SBA and the amounts previously allocated. HUD's methodology for allocation as specified in the June 17, 2016, and January 18, 2017, notices does not include additional funds for resilience activities. Detailed explanations of HUD's allocation methodologies for qualifying disasters from 2015 and 2016, are provided at Appendix A in the June 17, 2016 notice and Appendix A of the January 18, 2017 notice, respectively.

TABLE 2—QUALIFYING 2015 AND 2016 DISASTERS AND “MOST IMPACTED AND DISTRESSED” AREAS

FEMA disaster No.	Grantee	Minimum amount that must be expended for recovery in the HUD-identified “most impacted and distressed” areas
2015 Disasters		
4241	Lexington County (Urban County), SC	Lexington County Urban County Jurisdiction (\$5,038,000).
4241	Columbia, SC	Columbia (\$6,166,000).
4241	Richland County, SC	Richland County Urban County Jurisdiction (\$7,254,000).
4241	State of South Carolina	Charleston, Dorchester, Florence, Georgetown and Clarendon Counties* (\$23,896,800).
4223, 4245	Houston, TX	City of Houston (\$20,532,000).
4223, 4245	San Marcos, TX	City of San Marcos (\$8,714,000).
4223, 4245, 4272	State of Texas	Harris, Hays, Hidalgo, and Travis Counties (\$12,511,200).
2016 Disasters		
4263, 4277	State of Louisiana	East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes (\$41,148,000).
4273	State of West Virginia	Kanawha, Greenbrier, Clay, and Nicholas Counties** (\$36,476,000).
4266, 4269, 4272	State of Texas	Harris, Newton, Montgomery, Fort Bend, and Brazoria Counties (\$13,304,800).
4285	State of North Carolina	Robeson, Cumberland, Edgecombe, and Wayne Counties (\$30,380,800).
4286	State of South Carolina	Marion and Horry Counties (\$23,824,800).
4280, 4283	State of Florida	St. Johns County (\$47,468,000).

* Based on data presented by the grantee, HUD has approved the addition of Clarendon County to the 2015 South Carolina “most impacted and distressed” areas.

** Based on data presented by the grantee, HUD has approved the addition of Clay and Nicholas Counties to the 2016 West Virginia “most impacted and distressed” areas.

Use of funds for all grantees is limited to unmet recovery needs from the major disasters identified in Table 2. Table 2 shows the HUD-identified “most impacted and distressed” areas impacted by the identified disasters. At least 80 percent of the total funds provided to each grantee under this notice must address unmet needs within

the HUD-identified “most impacted and distressed” areas, as identified in Table 2. Grantees may spend the remaining 20 percent in the HUD-identified areas or areas the grantee determines to be “most impacted and distressed.”

B. Use of Funds

Public Law 115–31 requires funds to be used only for specific disaster recovery related purposes. This allocation provides funds to 2015 and 2016 CDBG–DR grantees for authorized disaster recovery efforts. Grantees allocated funds under this notice for 2015 and 2016 disasters must submit a

substantial Action Plan Amendment as outlined below.

C. Grant Amendment Process

To receive funds allocated by this notice, 2015 and 2016 grantees (listed in Table 1) must submit a substantial Action Plan Amendment to their approved Action Plan and meet the following requirements:

- Grantee must consult with affected citizens, stakeholders, local governments and public housing authorities to determine updates to its needs assessment;
- Grantee must amend its Action Plan to update its needs assessment, modify or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified within the context of the entire Action Plan. The beginning of every Action Plan Amendment must include a: (1) Section that identifies exactly what content is being added, deleted, or changed; (2) chart or table that clearly illustrates where funds are coming from and where they are moving to; and (3) a revised budget allocation table that reflects the entirety of all funds;
- Grantee must publish a substantial amendment to its previously approved Action Plan for Disaster Recovery prominently (see section VI.A.4.a of the November 21, 2016, notice and section VI.A.3.a of the June 17, 2016, notice) on the grantee's official Web site for no less than 14 calendar days. The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the amendment's contents and provide feedback;
- Grantee must respond to public comment and submit its substantial Action Plan Amendment to HUD no later than 90 days after the effective date of this notice;
- HUD will review the substantial Action Plan Amendment within 45 days from date of receipt and determine whether to approve the Amendment per criteria identified in this notice and all applicable prior notices;
- HUD will send an Action Plan Amendment approval letter, revised grant conditions (may not be applicable to all grantees), and an amended unsigned grant agreement to the grantee. If the substantial Amendment is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Amendment within 45 days of the notification letter;
- Grantee must ensure that the HUD approved substantial Action Plan Amendment (and original Action Plan)

is posted prominently on its official Web Site;

- Grantee must enter the activities from its published Action Plan Amendment into the Disaster Recovery Grant Reporting (DRGR) system and submit the updated DRGR Action Plan to HUD within the system;
- Grantee must sign and return the grant agreement to HUD;
- HUD will sign the grant agreement and revise the grantee's line of credit amount;
- Grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58, or adopts another Federal agency's environmental review where authorized under provisions incorporated by reference in Public Law 115-31, and, as applicable, receives a response from HUD or the state that approves the grantee's Request for Release of Funds and certification;
- Grantee must amend its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan Amendment approval.

D. Applicable Rules, Statutes, Waivers, and Alternative Requirements

Awards under this notice will be subject to the waivers and alternative requirements provided in the notices governing the award of CDBG-DR funds for 2015 and 2016 disasters, as identified in Table 1. These waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also ensuring that statutory requirements are met. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Waivers and alternative requirements are effective five days after they are published in the Federal Register.

E. Duration of Funding

Public Law 115-31 provides that these funds will remain available until expended. However, consistent with 31 U.S.C. 1555 and OMB Circular A-11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining balance will be made unavailable for obligation or expenditure. Consistent with the June 17, 2016, November 21, 2016, and

January 18, 2017 notices, the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements under this notice. Grantees must expend 100 percent of their allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

II. Waivers and Alternative Requirements for CDBG-DR Funds Appropriated by Public Law 114-223, 114-254 and 115-31 (Applicable Only to the State of Louisiana)

This section of the notice provides a waiver for the state of Louisiana, which has received CDBG-DR allocations pursuant to Public Law 114-223, 114-254 and 115-31. The state of Louisiana was allocated \$1,656,972,000 in CDBG-DR funds under Public Law 114-223 and 114-254 and HUD has approved the state's use of these CDBG-DR funds for three main recovery programs: Housing (86 percent), economic development (4 percent), and infrastructure (6 percent). These programs were developed to address the most urgent and significant unmet needs of those areas impacted by the eligible 2016 disasters. This notice allocates \$51,435,000 to Louisiana pursuant to Public Law 115-31, bringing the total amount allocated to the state for 2016 disasters to \$1,708,407,000.

1. *Waiver of the 70 percent overall benefit requirement (State of Louisiana only).* The overall benefit requirement set by the HCDA requires that 70 percent of the aggregate of the grantee's CDBG program's funds be used to support activities benefitting low- and moderate-income persons. It can be difficult for grantees working in disaster recovery to meet the overall benefit test, because disasters do not always affect low- and moderate-income areas and, therefore, this requirement can in some cases limit grantees' ability to assist the most damaged areas.

The November 21, 2016, notice maintained the 70 percent overall benefit requirement for all grantees receiving funds under these public laws, but provided the state of Louisiana and all other grantees with additional flexibility to request a lower overall benefit requirement. Specifically, that notice allows a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative

requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that low- and moderate-income (LMI) persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

The state of Louisiana submitted a request to establish a lower overall benefit requirement based on the above criteria. In its request, the state contends that out of the 57,600 households that suffered major or severe damage during the flooding in 2016, only 44 percent were low- and moderate-income (LMI) persons. The State's request notes that due to the persistent flooding that occurs in these communities, offering assistance to all households in the areas affected by the storm, and not just LMI households, will help the impacted neighborhoods with critical rebuilding needs.

Accordingly, the state will target its CDBG-DR funds to households with major or severe damage that did not have flood insurance at the time of the storms (36,510 households). The state indicates that 53 percent of those households qualify as LMI, and that 65 percent of the funds for the state's homeowner program will benefit those LMI households. The state also estimates that 100 percent of its housing rental funds will benefit LMI households, and 50 percent of the funds allocated for infrastructure and economic development activities will also meet the LMI national objective. The state designed its program so that those in greatest need are provided with the greatest level of assistance, by covering 100 percent of unmet needs for households earning less than 120 percent of area median income (AMI) and covering 50 percent of unmet needs for households above 120 percent of AMI. This approach prioritizes the unmet needs of LMI households and encourages higher income households to leverage personal or private funds.

To enable the state to undertake the activities it has deemed most critical for its recovery, and to ensure that LMI households are sufficiently served and/or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement from 70 percent to not less than 55 percent of the state's allocation of CDBG-DR funds. This means that the state must use at least 55 percent of its CDBG-DR

allocations under Public Law 114-223, 114-254 and 115-31 to benefit LMI households (or not less than \$939,623,850.00).

Based on the analysis submitted by the state, the Secretary finds a compelling need for this reduction due to the circumstances outlined in the state's request. In particular, HUD notes that the areas most damaged by the storms have limited LMI populations; that all of the state's recovery programs will have some component that will specifically benefit LMI households; that the persistent nature of flooding has led the state to focus on the importance of rebuilding communities in a holistic manner; and that the state will prioritize the unmet needs of LMI households in its homeowner recovery programs. HUD does not see evidence that reduction to the 50 percent level sought by the state is necessary given its approved program design and early data with respect to its applicant pools. HUD, however, does advise the state to maintain its current program design and targeting strategy to ensure that projected LMI benefit levels are achieved and the state continues to demonstrate that low- and moderate-income persons' disaster-related needs have been sufficiently met.

This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the state of Louisiana must meet when carrying out activities identified in its approved action from 70 percent to not less than 55 percent of the state's allocations of CDBG-DR funds under Public Law 114-223, 114-254 and 115-31.

2. *Waiver of Section 414 of the Stafford Act, 42 U.S.C. 5181 (State of Louisiana only).* The state of Louisiana has requested a waiver of section 414 of the Stafford Act, as amended, for rehabilitation or reconstruction activities. This notice grants the State's request and specifies alternative requirements.

Section 414 of the Stafford Act (42 U.S.C. 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) [42 U.S.C. 4601 *et seq.*] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA]". Accordingly, tenants displaced from their homes as a result of the identified

disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition, of real property for a federally assisted project or program may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to the CDBG-DR funded rehabilitation and reconstruction activities undertaken by the state of Louisiana, or its subrecipients, for its grants under Public Law 114-223, Public Law 114-254 and Public Law 115-31; provided that the activities were not planned, approved, or otherwise underway prior to the disaster.

The Department has surveyed other federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. Under the CDBG-DR supplemental appropriations, the Secretary has the authority to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds. The Department, in special cases, has previously granted a waiver and provided alternative requirements of Section 414 to CDBG-DR grantees, including the Gulf States impacted by disasters in 2005 and 2008 (see 72 FR 48804) and the 2011 floods in the city of Minot, North Dakota (see 79 FR 60490).

The severe floods of 2016 damaged Louisiana's affordable rental housing stock. According to the State, approximately 28,470 rental units were damaged by the floods, resulting in lower vacancies, increased rental rates and further exacerbating the housing cost burden among low- and moderate-income renters. Many of the damaged rental housing units have since been vacated by tenants who have found permanent housing elsewhere.

The state of Louisiana's CDBG-DR Action Plan for recovery from the 2016 floods identifies this rental housing need and contains several programs geared toward the repair and increase of the affordable rental housing stock by using CDBG-DR funds to reconstruct or rehabilitate rental units that were damaged by the floods and to create new rental housing by providing funding for multi-family developments.

Existing CDBG-DR funding is only sufficient to bring less than six percent of disaster-impacted rental units into decent, safe, and sanitary condition. With a potential pool of 1,500 units eligible for rehabilitation or reconstruction, a strict interpretation of Section 414 of the Stafford Act and 49 CFR 24.403(d)(1) would pose a significant administrative burden and add delays to achieving overall program goals within the timeframe set forth by the applicable notices governing the use of the CDBG-DR funds. Additionally, the State has demonstrated that replacement housing payments for persons initially displaced by the disaster will reduce funds available for improving long-term housing affordability and sustainability.

The State has identified a relatively small population of households currently in need of continued temporary housing assistance of some form related to the flooding events, and the State's CDBG-DR Action Plan attempts to address this need by funding programs designed to assist the needs of persons who are homeless or at risk of becoming homeless due to the 2016 floods.

The Department's basis for this waiver and alternative requirements are unique to the State of Louisiana as documented in its request to the Department. The Department has considered the State's request and determined that good cause exists for a waiver and alternative requirements and that such waiver and alternative requirements are not inconsistent with the overall purposes of title I of the HCD Act.

1. The State's proposal maximizes its ability to increase the overall supply of affordable rental units. Such units will have affordability requirements for low-income persons.

2. The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with a strict interpretation of Stafford Act Section 414 requirements on the potential pool of 1,500 units eligible for rehabilitation or reconstruction.

3. This waiver does not apply to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced by other HUD-funded disaster recovery programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted.

Due to the specific circumstances of Louisiana's recovery process, the Department is providing a waiver of Section 414 of the Stafford Act and its

implementing regulation at 49 CFR 24.403(d)(1), and establishing alternative requirements. For rehabilitation or reconstruction activities in support of bringing damaged rental units back into productive use, the State must adhere to the alternative requirements specified in this notice.

For tenants that have vacated housing units damaged by the 2016 floods, the State of Louisiana must:

1. Establish a publicly available rehousing plan for its rental housing programs that includes, at minimum, the following:

a. A rental registry containing information concerning the availability of all of the units assisted through its rental housing programs so that displaced low- and moderate-income households and other interested households may apply to live in these units;

b. Contact information and a description of any eligibility and applicable application process, including any deadlines;

c. Information on market rate rental units for non-LMI households displaced by the disaster;

d. A description of services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources.

2. Establish and implement operating procedures to ensure that a good faith effort is made to contact each former residential tenants to inform them of the availability of their previous unit and other available units rehabilitated under the program.

3. Offer low- and moderate-income former tenants preferred status in the residential application process for the unit from which they were displaced and for other rental units repaired or created with CDBG-DR funds.

The State's request for waiver and alternative requirements indicates that landlords participating in the rental repair programs will be required to keep the restored units affordable for 5 to 20 years after initial occupancy. The State's policies and procedures governing each rental repair program must detail any imposed affordability requirements for that program.

This waiver has no effect on URA eligibility for relocation assistance and payments for existing tenant occupants of dwelling units who may be displaced or relocated temporarily as a direct result of a CDBG-DR activity.

III. Allocation Framework for Disasters in 2017 or Later

A. Background

After addressing remaining unmet need for 2015 and 2016 disasters, \$57,800,000 in CDBG-DR funding remains available to be allocated for major disasters occurring in 2017 or later. Public Law 115-31 specifies that the funds allocated for disasters in 2017 or later are subject to the same authority and conditions as those applicable to CDBG-DR funds appropriated by Public Law 114-223 and, therefore, these funds are also subject to the requirements of the November 21, 2016 notice, except the major disaster may occur in calendar year 2017 or later until such funds are fully allocated.

For 2017 and later disasters, HUD will use the methodology specified in Appendix A to the January 18, 2017 notice for determining if a disaster meets the minimum qualifications for funding using the limits established by that notice. For disasters that meet the minimum qualification, HUD will allocate the lesser of 100 percent of serious unmet needs as defined in the January 18, 2017 notice or remaining funds available from Public Law 115-31.

HUD will not evaluate a disaster for qualification to receive CDBG-DR funds until:

(i) The major disaster has been declared eligible for FEMA's Public Assistance (PA) Program and Individual and Households (IHP) Program;

(ii) FEMA has approved Individual Assistance applications totaling at least \$13 million in IHP financial assistance for the declared disaster in a single county; and

(iii) four months have passed since the disaster declaration that made IHP available, or the IHP registration period is closed, whichever comes first.

These criteria do not assure CDBG-DR eligibility, but they will lead HUD to acquire the data necessary to determine eligibility, and if eligible, calculate a formula allocation. HUD will allocate funds to 2017 disasters using the best available data at that time.

B. Use of Funds

Grantees receiving an allocation of funds for 2017 and later disasters pursuant to a subsequent notice are subject to the requirements of the November 21, 2016 notice, as amended, which require that prior to the obligation of CDBG-DR funds, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address

long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. This Action Plan for disaster recovery must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (HCDA) or allowed by a waiver or alternative requirement; and (2) respond to disaster-related impact to infrastructure, housing, and economic revitalization in the most impacted and distressed areas. To inform the plan, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities, pursuant to paragraph A.2.a. in section VI of the November 21, 2016 notice, as amended.

Pursuant to the November 21, 2016 notice, each grantee receiving an allocation of funds for 2017 or later disasters in a subsequent notice is also required to expend 100 percent of its allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

Grantees receiving an allocation of funds for 2017 or later disasters pursuant to a subsequent notice will be subject to the grant process provided for in section V of the November 21, 2016 notice.

IV. Public Law 113-2 Waivers and Alternative Requirements

A. Background

This section of the notice authorizes waivers and alternative requirements for certain grantees that received an allocation of funds appropriated under Public Law 113-2, which ultimately made available \$15.2 billion in CDBG-DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The full amount of the appropriation has been allocated as follows: \$13 billion in response to Hurricane Sandy, \$514 million in response to disasters occurring in 2011 or 2012, \$655 million in response to 2013 disasters, and \$1 billion for the National Disaster Resilience Competition (NDRC).

This section of the notice specifies waivers and alternative requirements and modifies requirements for grantees that received awards under the NDRC (CDBG-NDR grantees), described in the **Federal Register** notice published by the Department on June 7, 2016 (81 FR 36557). The requirements of the June 7,

2016 notice continue to apply to these grantees, except as modified by this notice.¹

This section of the notice also provides a waiver of the low- and moderate-income overall benefit requirement for the City of Moore, OK, and the State of New York, which have each received a CDBG-DR award pursuant to Public Law 113-2. This section of the notice also modifies the process for the publication of the expenditure extensions approved by the Department under Public Law 113-2. This section of the notice additionally authorizes grantees receiving an allocation of CDBG-DR funds for Rebuild by Design projects to exclude expenditures of that allocation from the calculation of the grantee's overall low- and moderate-income benefit.

B. Applicable Rules, Statutes, Waivers, and Alternative Requirements

Public Law 113-2 authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

For the waivers and alternative requirements described in this section of notice, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purposes of title I of the HCDA. Grantees under Public Law 113-2 may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of Public Law 113-2, waivers must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

1. *Urgent need national objective certification requirements for CDBG-NDR grantees.* The June 7, 2016 notice provided CDBG-NDR grantees with a waiver and alternative requirement to

the certification requirements for the documentation of the urgent need national objective at 24 CFR 570.208(c) and 570.483(d), waiving the certification requirements until 24 months after the date the Department obligates funds to a grantee, and alternatively requiring each CDBG-NDR grantee to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. Elsewhere, this notice describes the extension of the expenditure deadline that the Department is authorized to provide to all CDBG-NDR grantees, allowing them to expend funds until September 30, 2022. For CDBG-NDR grantees funding activities that will satisfy the urgent need national objective, an extension of the existing alternative requirement to the standard urgent need certification requirement is also required, to ensure that the CDBG-NDR project can meet the urgent need national objective on a timeframe that coincides with an extended expenditure deadline.

Each CDBG-NDR grantee was required to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact. For activities that meet the urgent need national objective, grantees were required to reference in their Action Plan the type, scale, and location of the disaster-related impacts that each project, program, and/or activity will address. Without an extension of the prior waiver and alternative requirement to the certification requirements for documentation of the urgent need national objective, HUD's extension of the 24-month expenditure deadline could penalize grantees whose successful applications relied on the availability of the alternative urgent need national objective criteria.

Grantees documented urgent needs in their initial applications, and the grantees will expend funds to meet these urgent needs throughout the grant period. Therefore, section 3.V.A.1.d. of the June 7, 2016 notice is modified to add the following alternative requirement for CDBG-NDR grantees: "Notwithstanding the two year limitation on the use of the urgent need national objective referenced in paragraph one of this section, for activities designed to respond to disaster-related impacts that pose a serious and immediate threat to the health or welfare of the community, and which were adequately documented within the grantee's initial Action Plan, the grantee may continue to use the alternative certification of the urgent

¹ Links to the June 7, 2016 notice, the text of Public Law 113-2, and additional guidance prepared by the Department for CDBG-DR grants, are available on the HUD Exchange Web site: <https://www.hudexchange.info/programs/cdbg-dr/resilient-recovery/>.

need national objective until the end of the extended expenditure deadline approved by the Department, provided that the grantee updates the needs assessment of its Action Plan as new or more detailed/accurate disaster-related impacts are known."

As a reminder, Action Plans must be amended, as necessary, to ensure that an updated needs assessment is included for each project, program, or CDBG-eligible activity undertaken with CDBG-NDR funds. This alternative requirement does not contemplate new projects or activities that were not documented as meeting an urgent need within a grantee's initial Action Plan. Amendments to a CDBG-NDR Action Plan that describe additional projects or activities will trigger the substantial amendment requirements described in paragraph V.A.1.g.(i) in the June 7, 2016 notice and new projects or activities intended to meet the urgent need national objective may require a separate waiver from HUD to permit use of the alternative urgent need certification.

2. *Revision of substantial amendment requirements for CDBG-NDR grantees.* The June 7, 2016 notice specified the changes to an Action Plan that would constitute a substantial amendment, and described the process required for CDBG-NDR grantees to make a substantial amendment to an approved Action Plan. The June 7, 2016 notice indicated that HUD would review the proposed change(s) against the rating factors and threshold criteria and consider whether the revised Action Plan, inclusive of the proposed change, would continue to score in the fundable range for the NDRC. The June 7, 2016 notice also stated that HUD would only approve a substantial amendment if the revised score remains within the fundable range of CDBG-NDR scores. However, all NDR awards funded scaled and scoped versions of proposals in NDR applications, because the Department could not fully fund all the proposed activities described in applications that scored within the initial fundable range. Accordingly, determining whether a change to a grantee's Action Plan would fall within the initial fundable range of CDBG-NDR scores is not an accurate method of determining whether a revised project would still be fundable. To address this and to further clarify the criteria and process for amendments to CDBG-NDR Action Plans, the Department is amending the third paragraph of section 3.I.B. of the June 7, 2016 notice by replacing it in its entirety with the following:

"A grantee may amend the Action Plan, but must receive prior HUD approval for substantial amendments to the plan. Before making any substantial amendment to the Action Plan, a grantee must follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application, FR-5800-N-29A2 (NOFA). Additional information about citizen participation requirements can be found in section 3.V.A.3 below."

Additionally, the Department is also amending section 3.V.A.1. of the June 7, 2016 notice by replacing it with the following:

"1. *Application for CDBG-NDR Waiver and Alternative Requirement.* The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), and 24 CFR 91.220 and 91.320 are waived for funds provided under the NOFA. Instead, HUD required each grantee to submit an application for CDBG-NDR, and the Applicant's Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan required under Public Law 113-2. HUD notes that 24 CFR 570.304 and 24 CFR 570.485, to the extent they govern annual formula CDBG grant approvals, do not apply to National Disaster Resilience Competition (NDRC) allocations, but the standard of review of certifications continues to apply to grantee certifications. HUD will monitor the grantee's activities and use of funds for consistency with its approved Action Plan and all other requirements, including performance and timeliness. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove a substantial amendment to an Action Plan (application) if it is determined that the amended application does not satisfy all the required elements included in this notice at 3.V.A.1.g.(i). However, in reviewing substantial amendments, HUD will not penalize grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process."

The Appropriations Act, as used in the June 7, 2016 notice, refers to Public Law 113-2.

Additionally, the Department is also amending section 3.V.A.1.g. of the June 7, 2016 notice by replacing it in its entirety with the following:

"(g) *Action Plan Amendments, Submission to HUD, Treatment of Leverage, Partners, and BCA.* A grantee is encouraged to work with its HUD representative before making any amendments to its Action Plan to

determine whether the amendment would constitute a substantial amendment and to ensure that the proposed change complies with all applicable requirements.

(i) *Substantial Amendments.* The following modifications constitute a substantial amendment requiring HUD approval: Any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD's scaling and scoping of the award), would present a significant change to the grantee's capacity to carry out the grant (including loss of a partner without addressing lost capacity through replacement or contingency plan identified in the application); any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD's scaling and scoping of the award), would undermine the grantee's soundness of approach (including the benefit cost analysis); any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA); any change in program benefit, beneficiaries, or eligibility criteria, and the allocation or reallocation of more than 10 percent of the grant award; any change to the leverage that was pledged and approved in the grantee's grant agreement; or the addition or deletion of an eligible activity.

Amendments that do not fall within the definition of substantial amendment are referred to as 'nonsubstantial amendments.' A grantee must notify HUD at least 10 business days before a nonsubstantial amendment becomes effective.

For substantial amendments, grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. In addition to reviewing Action Plans against the criteria at 24 CFR 91.500, HUD will review and approve a substantial amendment to an Action Plan if the amendment results in an Action Plan that HUD determines: (i) Can be reasonably carried out by the grantee and that the grantee has addressed any loss in capacity due to dissolved partners that are not replaced; (ii) may differ from the previously approved Action Plan but does not significantly deviate from the scope and objectives of the previously approved Action Plan or the purpose of the NDRC; (iii) satisfies all of the required elements identified in the NOFA (as adjusted for HUD's scaling and scoping of the

award), this amended section 3.V.A.1.g. and elsewhere in the June 7, 2016 notice, including Tie-back requirements, and does not fund activities identified in section III.C.2. of the NOFA as ineligible; (iv) demonstrates (through an updated BCA, if requested) that the benefits to the grantee's community and to the United States continue to justify the costs of the award; and (v) does not differ in the amount of leverage identified in the grantee's grant agreement (substitution of leverage sources is permitted).

To allow HUD to make this determination, a grantee must submit adequate documentation that demonstrates the following: capacity of the grantee and partners to implement the funded activities, any changes to partners who will assist in the amended activity, scope and beneficiaries of the funded activities, the direct and supporting leverage committed by the grantee, and an updated BCA (if requested). Grantees are encouraged to work with their HUD representatives before making any amendment to an Action Plan. As indicated in the NOFA, if a grantee makes or proposes to make a substantial amendment to its project, HUD reserves the right to disapprove the amendment or amend the grantee's award and reduce the grant amount or recapture the grant, as necessary.

(ii) *Information for Substantial and Nonsubstantial Amendments.* If the grantee proposes to amend its Action Plan, each proposed amendment must be highlighted, or otherwise identified, within the context of the approved Action Plan and be submitted to HUD. All amendments must comply with provisions of this notice, including Tie-back requirements. Grantees may not amend an Action Plan to include funding for ineligible activities identified in section III.C.2 of the NOFA. The beginning of every proposed amendment must include a section that identifies exactly what content is being added, deleted, or changed, and whether the grantee believes that the proposed amendment would result in a significant change to the grantee's capacity or soundness of approach. This section must also include a chart or table that clearly illustrates where funds are coming from and to where they are moving. The amendment must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its approved NDR application and its DRGR Action Plan must be accessible for viewing as a single document, at any given point in time, rather than requiring the public or HUD to view and cross-reference changes

among multiple amendments.

Requirements for the full expenditure of CDBG-NDR funds by a date established by HUD will continue to be enforced under any amendment to the Action Plan. Every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of a proposed amendment via email or letter within 5 business days of receipt. HUD may seek additional information from the grantee to determine whether a proposed amendment is a substantial amendment.

(iii) *Amendments that may affect the BCA previously accepted by HUD.* If requested by HUD, a grantee must submit an update to its BCA to support a request for a substantial amendment.

(iv) *Leverage Accepted by HUD.* Grantees are required to show, through quarterly reports, evidence that firmly committed leverage resources in the amount required by the grant terms and conditions have been received and used for the intended purposes. A grantee may not propose an amendment to reduce the amount of leverage pledged and identified in the grant agreement. Sources of leverage funds, however, may be substituted after grant award with HUD approval, if the dollar amount of leverage is equal to or greater than the total amount of leverage required by the grant terms and conditions. Substitution of a leverage source in the same amount committed and identified in the grant terms and conditions is a nonsubstantial amendment. Section 3.V.A.2.e describes additional DRGR leverage reporting requirements.

(v) *Partners Accepted by HUD.* The NOFA permitted a grantee to identify a partner in its application that the grantee would be otherwise required by program requirements to competitively procure. A grantee is not required to secure the services of any partner by competitive procurement if the partner is duly documented and identified in the initial approved Action Plan for the CDBG-NDR grant. The Department has granted permission for single source procurement of these partners, pursuant to 2 CFR 200.320(f)(3) (cited in the NOFA as 24 CFR 85.36(d)(4)(i)(C), which has since been superseded by the Uniform Requirements) and advised state grantees that have not adopted the local government procurement requirements in 2 CFR part 200 to review state requirements associated with single source procurement and to follow all applicable procurement requirements. In many cases, this will entail the grantee undertaking a cost

analysis prior to making payments to such a partner, and the grantee will be responsible for ensuring compliance with requirements that all CDBG-NDR costs be necessary and reasonable (for local government grantees, see 2 CFR 200.323, for state governments that have not adopted 2 CFR 200.323, see state procurement requirements applicable to single source procurements). If a partner dissolves the partnership after award and before activities are complete, a grantee should make its best effort to replace the partner with a similarly skilled partner, if the grantee's approved CDBG-NDR application was rated and ranked based on the capacity of the dissolved partner. If the grantee is not able to replace the lost capacity of a partner by following a contingency plan included in its approved CDBG-NDR application, the grantee must complete a substantial amendment to its Action Plan that addresses the lost capacity. If a grantee proposes to add a partner that would otherwise have to be procured as a contractor after the award or if the partner was identified in the approved CDBG-NDR application but was found by HUD to lack sufficient documentation, then that selection of that partner would not be covered by the single-source permission above and would be subject to procurement requirements under 2 CFR part 200 or state law, as applicable. Additionally, as required by Appendix D to the NOFA, the grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with each partner regarding the use of the CDBG-NDR funds, before disbursing any CDBG-NDR funds to the partner. The written agreement must conform with all CDBG-NDR requirements and shall require the partner to comply with all applicable CDBG-NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), title I of the HCDA (42 U.S.C. 5302 et seq.), the CDBG program regulations at 24 CFR part 570, this amended June 7, 2016 notice, and any other applicable Federal Register notices, and commitments made in the grantee's Phase 1 and Phase 2 approved CDBG-NDR applications."

Additionally, the Department is also amending the first paragraph of section 3.V.A.3.a. of the June 7, 2016 notice by replacing it in its entirety with the following:

a. Publication of the Action Plan, Access to Information, and Substantial Amendments: At all times, the grantee must maintain a public Web site that contains the latest versions of its Action Plan, including the DRGR Action Plan and the version as

submitted to HUD for the competition and including the following portions: Executive summary; Factor narratives; Eligibility; national objective; overall benefit; and schedule responses, threshold requirements documentation, and all exhibits (A–G) (but of the attachments, only Attachments D and F must be published); and opportunity for public comment, hearing, and substantial amendment criteria. Before the grantee submits a proposed substantial amendment, the grantee must publish the proposed submission, including a section that identifies exactly what content is being added, deleted, or changed, and whether the grantee believes that the proposed amendment would result in a significant change to the grantee's capacity or soundness of approach; a chart or table that clearly illustrates where funds are coming from and to where they are moving; and a revised budget allocation table that reflects the entirety of all funds, as amended.

3. *Projection of Expenditures and Outcomes.* The June 7, 2016 notice specified the time frames for grantees to report and update the projection of expenditures and performance outcomes for CDBG–NDR grants. As grantees have refined and finalized outcomes for each CDBG–NDR grant, the Department has determined that further clarification of the time frames for initially reporting and updating grantee projections of expenditures and outcomes is required. Accordingly, Section 3.II.B(9) of the June 7, 2016 notice is amended by replacing it in its entirety with the following:

(9) *Continuing responsibility related to certification.* After materials necessary to support the Secretary's certification are submitted and the grant agreement is signed, grantees have continuing responsibilities for maintaining the certification. HUD may request an update to the grantee's certification submission each time the grantee submits a substantial Action Plan Amendment, or if HUD has reason to believe the grantee has made material changes to grantee's support for its certifications.

Grantees must submit to the Department for approval an update to the program schedule (projection of expenditures) and milestones (outcomes) included in the approved CDBG–NDR application response to the Phase 2 Factor 3 Soundness of Approach rating factor. The projections must be based on each quarter's expected performance—beginning the quarter that funds are available to the grantee and continuing each quarter until all funds are expended. Each grantee must also include these projected expenditures and outcomes in the initial activity set-up in DRGR. Within 90 days of HUD's approval of the initial DRGR Action Plan, the projections entered into DRGR (as contained in the DRGR Action Plan) must be amended to reflect any subsequent changes, updates, or revision of the projections. Any subsequent changes, updates, or revision of the projections must receive written approval from HUD. Amending Action Plans solely to

accommodate changes to the timeline for projected expenditures does not fall within the definition of substantial amendment and is not subject to citizen participation requirements.

Guidance on the preparation of projections is available on HUD's Web site under the headings Office of Community Planning and Development, Disaster Recovery Assistance (<https://www.hudexchange.info/resource/3685/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>). The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. HUD will make the DRGR Action Plan and performance reports available on the DRGR public Web site (<https://drgr.hud.gov/public/>).

Additionally, following execution of a grant agreement, the DRGR Action Plan that reflects the components funded through the CDBG–NDR grant must be posted on the grantee's Web site.

Additional information on the DRGR reporting system requirements can be found in section 3.V.A.2. below.

Grantees are also required to ensure all agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or the date of completion. In addition, grantees must enter expected completion dates for each activity in the DRGR system. When target dates are not met, grantees are required to explain why in the activity narrative in the system.

Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section 3.V.A. of this amended June 7, 2016 notice. The Department will institute risk analysis and on-site monitoring of grantee management as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

In addition to the above changes, HUD is modifying the last paragraph of section 3.IV of the June 7, 2106 notice, by replacing it in its entirety with the following:

• "Grantee amends its published Action Plan (the DRGR Action Plan) to include any updates to its projection of expenditures and outcomes within 90 days of HUD's approval of the initial DRGR Action Plan."

4. *Waiver of Limitation on Planning Costs (State of New Jersey only).* The Department is modifying the alternative requirement in the June 7, 2016 notice which imposes a 20 percent limit on planning and administrative costs, and is imposing an alternative requirement for the state of New Jersey to accommodate activities to be funded under the state's approved CDBG–NDR Action Plan. The June 7, 2016 notice waived section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) for states and provided an alternative requirement that limits CDBG–NDR grantees to using no more than 20 percent of the total grant amount on a combination of

planning and general administrative costs (see paragraph V.A.10.b.(1) of the June 7, 2016 notice). The state submitted a Phase 2 application to HUD for the NDRG on October 27, 2015, describing an array of recovery and resilience activities that included both infrastructure and planning activities. In January 2016, the Department made a CDBG–NDR award of \$15 million to the state for two proposed planning-only projects, a Regional Resiliency Planning (RRP) Grant Program and a best practices toolkit. As part of its RRP Grant Program, the state proposed to invest CDBG–NDR funds in a program evaluation that investigates the efficacy of its grant program and facilitates replication of the program in other communities. Because the entirety of the state's CDBG–NDR award is for the purpose of planning-only activities, HUD is modifying the limitation described in the June 7, 2016 notice for the state of New Jersey only, and imposing the following alternative requirement:

To ensure that the state of New Jersey can devote the full amount of CDBG–NDR grant funds to both of its approved planning-only projects, the Department is waiving section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) to remove the limitation on planning expenses for this grant, thereby permitting the state to expend 100 percent of its CDBG–NDR grant on planning and administration expenses. Additionally, to ensure that the state devotes a minimum amount of its funds to local level planning activities as described in its approved CDBG–NDR Action Plan, the Department is requiring that at least 80 percent of the \$10 million provided for the RRP in the state's Action Plan (\$8 million) be expended on local planning grants.

As a reminder, the state must continue to limit its general administrative costs for the CDBG–NDR grant to 5 percent of its total grant award, as provided in Public Law 113–2 and the June 7, 2016 notice. The state must also adhere to the program funding amounts in the state's grant agreement terms and conditions, as amended.

5. *Waiver of Limitation on Planning Costs (State of Connecticut only).* The Department is modifying the alternative requirement in the June 7, 2016 notice which imposes a 20 percent limit on planning and administrative costs, and is imposing an alternative requirement for the state of Connecticut to accommodate activities to be funded under the state's approved CDBG–NDR Action Plan. The June 7, 2016 notice waived section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) for states and provides an alternative requirement that limits CDBG–NDR grantees to using no more than 20 percent of the total

grant amount on a combination of planning and general administrative costs (see paragraph V.A.10.b.(1) of the June 7, 2016 notice). The state submitted a Phase 2 application to HUD for the NDRC on October 27, 2015, describing an array of recovery and resilience activities that included both infrastructure and planning activities. In January 2016, the Department made a CDBG-NDR award of \$54,277,359 to the state for infrastructure and the following planning activities: Bridgeport South End Design Guidelines (\$330,000), Bridgeport South End District Energy Feasibility (\$350,000), Connecticut Connections Coastal Resilience Plan (\$8,203,323), and the State Agencies Fostering Resilience (SAFR) program (\$3,500,000), which includes both administration and planning expenses.

The sum of planning projects funded under this award is \$12,383,323, or 22.8 percent of the total grant award amount, and the maximum allowable amount that can be used for general administrative expenses is 5 percent of the grant total or \$2,713,868. In order to allow the state to fully fund its selected projects and properly administer its grant award, HUD is modifying the limitation described in the June 7, 2016 notice for the state of Connecticut, and imposing the following alternative requirement:

The Department is waiving section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) to increase the limitation on planning and general administration expenses for this grant to 27.8 percent or \$15,097,191.

As a reminder, the state of Connecticut must continue to limit its general administrative costs for the CDBG-NDR grant to 5 percent of its total grant award, as provided in the Appropriations Act and the June 7, 2016 notice. The state must also adhere to the program funding amounts in the state's grant agreement terms and conditions, as amended. The Appropriations Act referenced in the amended June 7, 2016 notice is Public Law 113-2.

6. Waiver for Eligible Activity (Commonwealth of Virginia only). The Department awarded the Commonwealth of Virginia CDBG-NDR funds to develop a Coastal Resilience Lab and Accelerator Center (the Center) that supports new business initiatives aimed at addressing flood risk. Many of the Center's components, however, are not otherwise CDBG-eligible activities. Accordingly, the Commonwealth requested and the Department is granting a waiver and establishing an alternative requirement to create a CDBG-eligible activity that comprises all the components proposed for the Center.

The Commonwealth's approved Action Plan states that the Center will "serve as the nexus for technological and organizational innovation around community revitalization, water management, resilience measurement," and will "focus on generating economic growth by assisting entrepreneurs skilled at identifying problems, matching them with potential solutions, working with companies to create product, and moving product quickly to market." To this end, the Commonwealth will use its CDBG-NDR grant to fund specific components of the project including the design plan for the operations of the Center, training, office space, and capital investment for emerging businesses focused on regional resilience solutions, targeted workforce development and support, public outreach, and sharing best practices.

In rare instances when necessary to achieve recovery goals, HUD has previously granted waivers and alternative requirements to allow a grantee to treat a large complex project as a single eligible activity with multiple components that contribute to long-term recovery. HUD's approval of the Commonwealth's application through the NDRC is intended to support the creation of a new regional industry cluster to serve as a model for other communities that want to support businesses in this field.

HUD has determined that many of the proposed project components in the Commonwealth's application, including the development of a public facility, support for small businesses through training and capital, supporting workforce development, public engagement, and knowledge dissemination are already eligible CDBG activities. Therefore, to streamline implementation of the Center and its programs and allow the Commonwealth to proceed with valuable project components that are not eligible CDBG activities, HUD is waiving section 105(a) (42 U.S.C. 5305(a)) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for the Commonwealth's CDBG-NDR grant, referred to as the Center, comprised of the activities outlined in the Commonwealth's approved Action Plan for its CDBG-NDR grant. However, HUD reminds grantees that the following provision in the June 7, 2016 notice remains in effect: "When CDBG-NDR grantees provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG-NDR funds may not be used to directly assist a privately-owned utility for any purpose".

7. Waiver and alternative requirement for low- and moderate-income area benefit activities (State of California only). The Department awarded the State of California CDBG-NDR funds to develop a Community and Watershed Resilience Program in response to the 2013 Rim Fire that was the third largest wildfire in California's history. The program will finance the development of a biomass facility and wood products campus in Tuolumne county as well as a forest and watershed health component focused on forest restoration efforts, rangeland improvements, and biomass removal and thinning throughout the region. The program also includes the establishment of a community resilience center that will offer business incubator and job training services, while also serving as an emergency evacuation center for the broader community.

The state's approved CDBG-NDR application noted that the most impacted and distressed area with remaining unmet disaster recovery needs to be served by the project encompasses the non-entitlement jurisdictions of Tuolumne, Mariposa and Calaveras counties, where 38 percent of the residents are low- and moderate-income (LMI). The state's application indicated that if CDBG-NDR funds were awarded for the program, the state would require a waiver that would permit activities carried out in areas with an LMI percentage of not less than 38 percent to qualify under the low- and moderate-income area benefit national objective.

Subsequent to the award and in response to HUD's scoping and scaling of the project, the state submitted a revised request to the Department, seeking a waiver and alternative requirement that would allow the state to apply exception criteria that recognizes that few, if any communities within the service area have 51 percent or more low- and moderate-income residents, per the requirements of 42 U.S.C. 5305(c)(2)(A), allowing the state to use a 38 percent LMI threshold to qualify activities under the LMI area benefit national objective. In its request, the state contends that the very nature of the initiatives financed with CDBG-NDR funds means that communities beyond the identified service area will also realize benefits, through reduced risks associated with wildfires, improved watersheds and new economic opportunities arising from efforts to commercialize the area's biomass.

Based on the state's request and the fact that the approved project has a combined LMI population that is not

greater than 38 percent of the area, HUD is granting a limited waiver modifying 42 U.S.C. 5305(c)(2)(A)(i), to the extent necessary to permit the state to use a percentage of not less than 38 percent to qualify activities under the low- and moderate-income area benefit national objective.

8. *Waiver of the 50 percent overall benefit requirement (City of Moore, OK only).* The primary objective of the HCDA is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 42 U.S.C. 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of the grantee's CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target can be difficult for many CDBG-DR grantees to reach as a disaster impacts entire communities—regardless of income. Further, it may limit grantees' ability to provide assistance to the most damaged areas of need. Therefore, as described by the December 16, 2013 *Federal Register* notice (78 FR 76154), the city of Moore, Oklahoma, in addition to the other grantees under Public Law 113-2 received a waiver and alternative requirement reducing the amount of the city's CDBG-DR funds that must be used for activities that benefit LMI persons to 50 percent. Additional flexibility was provided in the March 5, 2013 *Federal Register* notice (78 FR 14329). It allowed a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 50 percent requirement; and (d) demonstrates that the needs of non-low and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them. Upon HUD's review of the justification, the request can be granted only if the Secretary finds a compelling need to reduce the overall benefit below 50 percent.

In response to the above, the city of Moore submitted a justification addressing the required criteria. The EF-5 tornado that struck Moore in 2013

also destroyed several affordable housing developments in the city which have not been replaced. The city council adopted a plan in March of 2013 that included infrastructure projects in support of a new affordable housing development project that will bring much needed LMI affordable units to the city. In order to carry out these activities the city acquired land in a closed mobile home park which will allow it to replace a portion of the LMI affordable rental housing destroyed by the EF-5 tornado. Demolition of the remaining structures and asbestos abatement has been completed and a Planned Unit Development (PUD) design for the site has been adopted. The SW 17th/Janeway Master Redevelopment plan will be a mixed use, mixed income urban village which will be built at an overall cost of \$36-\$40 million. This redevelopment will include the use of \$13.5 million in CDBG-DR grant funds and provides for 170 affordable LMI units and 30 market rate units. The city council approved the master plan and PUD in October 2016, and staff are currently developing a Request for Proposals to solicit development bids. After the completion of the SW 17th/Janeway development, the city expects that the percent of LMI residents in the block group which contains the development will rise to 57.2 percent, well above the 51 percent required to classify a project under the low/mod area benefit (LMA) national objective.

Through its Infrastructure Recovery and Implementation Plan (IRIP), designed in 2014, the city identified several flood control and drainage projects that will support the development of SW 17th/Janeway and its affordable housing units, and thus will directly benefit the LMI residents that return to the area. Currently, there are three infrastructure projects associated with the Round Rock development that will not meet the area benefit test that requires at least 51 percent of the residents in the area are LMI using the most current HUD FY 2016 data. The three projects include the Little River Sewer Interceptor project, the S. Telephone Road Improvements project, and the Little River Channel and Greenway project totaling over \$7.6 million in CDBG-DR investments. While these projects will directly benefit the new housing development, they will also benefit other block groups within the city. Without this waiver, the city could carry out these activities under the national objective of Urgent Need, but because of the large number of CDBG-DR funds

dedicated to these activities, the city would then not be able to meet its 50 percent LMI overall benefit requirement. Hence, the city cannot carry out these infrastructure activities without a waiver.

To enable the city to undertake these infrastructure activities it has deemed most critical for its recovery, and to ensure that LMI residents are adequately served and/or assisted, HUD is granting a limited waiver and alternative requirement to reduce the overall benefit from 50 percent to not less than 42 percent. Based on the city's justification, the Secretary has found a compelling need for this reduction due to the circumstances outlined in Moore's request. In particular, HUD notes that these projects will all directly serve the new housing development that will provide 170 units of affordable LMI housing, prioritizing the needs of those LMI residents because these three projects will ensure that the redevelopment site is no longer in a FEMA floodway, will repair and replace sewage lines that will service the development, and install traffic control lights and widen an intersection to handle the increased density the development will bring. The city has identified these infrastructure projects as a top priority to ensure the success of the SW 17th/Janeway redevelopment and this waiver will allow LMI persons to live there safely. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the city must meet when carrying out activities with funds appropriated under Public Law 113-2 from 50 percent to not less than 42 percent.

9. *Waiver of the 50 percent overall benefit requirement (New York State, only).* As described in the March 5, 2013 notice, the state of New York and all other grantees under Public Law 113-2 received a waiver and alternative requirement requiring that at least 50 percent of CDBG-DR grant funds must be used for activities that benefit low- and moderate-income persons.

The state of New York has submitted a justification to HUD to reduce the overall benefit requirement for funds provided under Public Law 113-2. HUD has allocated \$4,416,882,000 in CDBG-DR funds to the state pursuant to Public Law 113-2, including \$185 million for projects identified by HUD through the Rebuild by Design competition. The state's CDBG-DR grant is administered by the Governor's Office of Storm Recovery (GOSR).

GOSR's approved action plan allocates its CDBG-DR grant to four main recovery programs: Housing (58 percent), economic development (3 percent), community reconstruction (18 percent) and infrastructure (21 percent). These programs were developed by GOSR to address the most urgent and significant unmet needs of those areas impacted by the storms that are eligible under Public Law 113-2—Hurricanes Sandy and Irene. In its request, GOSR contends that it has engaged in extensive and continued outreach to all persons and businesses impacted by the storms to inform the state's citizens of the availability of recovery programs and how to apply, and that all eligible applicants will receive assistance. Significantly, GOSR's analysis of the geographic areas most impacted by the storms demonstrates that the storms did not damage areas with significant LMI populations. Because HUD requires grantees receiving funds under Public Law 113-2 to spend at least 80 percent of each grant in the HUD identified most impacted counties, it is very difficult for the state to meet both this requirement and the requirement that at least 50 percent of the expended funds benefit LMI populations.

GOSR has submitted an extensive data analysis to illustrate that the demographics of the communities most impacted by the storms are generally not comprised of LMI block groups. GOSR's data illustrates that, outside of the five counties that comprise New York City, the storms impacted communities in which only about 20 percent of the population resides in LMI block groups. GOSR has reported that while there are 3.96 million people living in the state's most impacted counties (Nassau, Westchester, Suffolk, and Rockland), only 34 percent of those residents are LMI persons and only 25 percent of the block groups are considered LMI.

The state uses this data to illustrate its difficulty in meeting the LMI area benefit national objective, particularly as it relates to infrastructure. Many of the state's infrastructure projects are large in scale and have widespread positive impacts for persons of all income levels, including LMI persons, but it is nearly impossible for those projects to meet the LMI area benefit criteria. For example, one of the state's largest investments, the \$101 million Bay Park Wastewater Treatment Plant project, benefits a service area that includes more than 370 block groups. Even though this project benefits many thousands of LMI residents within these block groups (approximately 135,000 LMI persons), there are not enough LMI

persons to meet the 51 percent test for an LMI area benefit activity.

Given these challenges, the state has proposed allocating additional funds to initiatives that further address unmet needs of LMI persons, including the reallocation of \$50,000,000 of Community Reconstruction (CR) funds to projects within the city of New York that will meet the applicable LMI area benefit criteria.

To enable the state to undertake the activities it has deemed most critical for its recovery, and to ensure that LMI households are adequately served and/or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement for the state's grant from 50 percent to not less than 35 percent of the state's allocation of CDBG-DR funds, excluding the \$185 million allocated by HUD for Rebuild by Design projects and, consistent with existing program requirements and subject to the requirements in paragraph 10, below. This means that the state must use at least 35 percent of its CDBG-DR allocation (excluding RBD) under Public Law 113-2 to benefit LMI persons.

Based on the analysis submitted by the state, the Secretary has found a compelling need for this reduction due to the particular circumstances outlined in the state's request. In particular, HUD notes that the areas most damaged by the storms have limited LMI populations; that the infrastructure projects being undertaken by the state will nonetheless directly serve large populations of LMI persons; that the state has done significant outreach to communities in the most impacted counties and will serve all eligible applicants that have applied for assistance; and that the state will reallocate at least \$50,000,000 of Community Reconstruction funds to increase the number of LMI persons served. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the state must meet when carrying out activities identified in its approved action with funds appropriated under Public Law 113-2 from 50 percent to not less than 35 percent.

10. Rebuild By Design Exception to Overall Benefit Requirement. In the October 16, 2014, *Federal Register* notice (79 FR 62182), HUD allocated \$930,000,000 of CDBG-DR funds made available under Public Law 113-2, for the implementation of six proposals selected through the HUD-sponsored

Rebuild by Design (RBD) competition. The RBD allocation was included as part of the larger allocation of CDBG-DR funds under Public Law 113-2 for long term recovery from Hurricane Sandy. Four grantees received an RBD allocation as part of their CDBG-DR grant for Hurricane Sandy recovery: The state of New York, the city of New York, the state of Connecticut, and the state of New Jersey.

The proposals selected through the Rebuild by Design Competition were identified prior to the development and approval of action plans for grantees receiving an allocation of CDBG-DR funds under Public Law 113-2. The October 16, 2014, notice notes that the individual proposals were selected to address the structural and environmental vulnerabilities that Hurricane Sandy exposed in communities throughout the region and to provide fundable solutions to better protect residents from future disasters. The notice also requires that projects funded with the RBD allocation reflect the proposals selected through the Rebuild by Design Competition to the greatest extent practicable and appropriate.

The RBD proposals were selected by HUD and the RBD allocation was included as part of each grantee's overall CDBG-DR allocation for Hurricane Sandy recovery, however, HUD recognizes that as the location and scope of an RBD project is further refined, the RBD portion of a grantee's overall CDBG-DR allocation may prevent certain grantees from meeting the requirement of the March 5, 2013, notice that at least 50 percent of each grantee's overall allocation of CDBG-DR funds be expended to meet the LMI national objective. Accordingly, the Secretary has found a compelling need for this waiver based on the facts presented above. In particular, HUD's selection of RBD projects within defined geographic areas may limit the ability of grantees to meet an LMI national objective within that defined area. This is a limited waiver and alternative requirement to modify 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to allow the four grantees receiving an allocation of CDBG-DR funds specifically for RBD projects, to either include or exclude the expenditure of its RBD allocation in the calculation of the grant's overall LMI benefit. If a grantee chooses to exclude the expenditures of its RBD allocation from its overall benefit calculation, it is required to notify HUD and the public through a non-substantial amendment to its approved action plan.

11. *Publication of Approved Expenditure Extension Requests.*

Pursuant to the requirements of section 904(c) under title IX of Public Law 113–2, CDBG–DR and CDBG–NDR funds must be expended within 24 months following obligation, unless an extension is provided. The Office of Management and Budget (OMB) granted the Department a waiver of the statute's two-year expenditure timeline, recognizing that certain disaster recovery activities satisfy the OMB criteria for activities that are long-term by design where it is impracticable to expend funds within the 24-month period and achieve program missions. HUD may grant extensions for activities that satisfy the OMB criteria. The **Federal Register** notice published by the Department on May 11, 2015 (80 FR 26942) and the June 7, 2016 notice established the process and requirements for extension of the deadline for the expenditure of funds under Public Law 113–2, including the requirement that HUD publish its approval of the extension of grantee expenditure deadlines in the **Federal Register**. In order to provide the public with more timely information about the expenditure deadlines for funds provided under Public Law 113–2, the Department is amending both the May 11, 2015 notice and the June 7, 2016 notice, respectively, to provide for the publication of expenditure deadline extensions on the Department's Web site.

Accordingly, the last bullet of Section VI of the May 11, 2015 notice is amended to read:

- "If approved, HUD will publish the extension approval on its web site at: <https://www.hudexchange.info/programs/cdbg-dr/>. HUD will consolidate grantee extension approvals for publication. Therefore, extension approval is effective as of the date of the extension approval letter, rather than as of the date the approval is published on the HUD web site."

The first paragraph Section II.A.2 of the June 7, 2016 notice is also amended to read:

"For any portion of funds that the grantee believes will not be expended by the deadline and that it desires to retain, the NOFA required the Grantee to submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of the funds. Appendix E of the NOFA also required Applicants to submit extension requests with the application if the Applicant submitted a schedule that indicated time needed for completion of the proposal exceeds 24 months. Some Applicants submitted extension requests to HUD within their

applications and such extensions were considered within the application review process. If granted, any extensions will be published on the HUD web site at: <https://www.hudexchange.info/programs/cdbg-dr/>. Under the NOFA, grantees that did not submit an extension request with their Applications are eligible to request an extension prior to the expiration of the twenty-four month deadline for the expenditure of obligated funds. As required by Appendix E of the NOFA, the extension request must justify the need for the extension, detail the compelling legal, policy or operational challenges necessitating the extension, and identify the date when funds covered by the extension will be expended. The Grantee must justify how, under the proposed schedule, the Project will proceed in a timely manner. For example, large and complex infrastructure Projects are likely to require more than 24 months to complete. An extension request for such a Project should justify the new timeline for any proposed extension by comparing it to completion deadlines for other similarly sized Projects."

V. New LMI National Objective Criteria for Buyouts and Housing Incentives (Applicable to Multiple Appropriations)

Historically, various **Federal Register** notices published by HUD have authorized CDBG–DR grantees to carry out "buyouts," which have been generally limited to the acquisition of properties located in a floodway or floodplain or Disaster Risk Reduction Area for pre- or post-flood value for the purpose of reducing risk from future disasters. These notices also generally prohibit redevelopment of property acquired through buyouts. Certain previous CDBG–DR **Federal Register** notices also waive 42 U.S.C. 5305(a) and associated regulations to allow grantees to offer housing incentives to resettle beneficiaries who were in disaster-affected communities. As described in those notices, housing incentives are usually offered to encourage households to relocate to a suitable housing development or to an area promoted by the community's comprehensive recovery plan, and may be in addition to acquisition or buyout awards.

In this notice, HUD is establishing an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. Grantees authorized to use housing incentives as described above, must continue to comply with the other eligibility requirements of applicable **Federal Register** notices

governing those incentives—specifically, the requirement that grantees "providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. In addition, the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). Note that this waiver does not permit a compensation program. Additionally, a grantee may require the incentive to be used for a particular purpose by the household receiving the assistance."

The CDBG regulations limit activities that meet the LMI national objective to only the activities meeting the four established criteria in 24 CFR 570.208(a)(1) through (4) and 570.483(b)(1) through (4). Prior **Federal Register** notices have advised grantees of the criteria under which a buyout activity can meet a LMI housing (LMH) national objective (80 FR 72102). Notwithstanding that guidance, however, HUD has determined that providing CDBG–DR grantees with an additional method to demonstrate how buyouts and housing incentives can assist LMI households, beyond those described in the previous notices, will ensure that grantees and HUD can account for and assess the benefit that CDBG–DR assistance may have on LMI households when buyouts and housing incentives are used in long term recovery. Given the primary objective of the HCDA to assist low- and moderate income persons, the Secretary has determined that there is good cause to establish an alternative requirement under which CDBG–DR grantees are authorized to qualify the assistance provided to LMI persons through buyout and housing incentive programs, due to the benefits received by the individuals that receive buyout and housing incentive awards that allow them to move from areas that are likely to be affected by future disasters.

In addition to the existing criteria at 24 CFR 570.208(a)(1)–(4) and 570.483(b)(1)–(4), HUD is establishing an alternative requirement to include two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG–DR funding provided by Public Law 113–2, 114–113, 114–223, 114–254 and 115–31.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

- (1) The CDBG–DR funds have been provided for an eligible buyout activity that benefits LMI households by

supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG-DR funds:

(a) Low/Mod Buyout (LMB). When CDBG-DR funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount is greater than the pre-disaster fair market value of that property;

(b) Low/Mod Housing Incentive (LMHI). When CDBG-DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary.

Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-DR grantee's overall LMI benefit to comply with the primary objective described in 24 CFR 570.200(a)(3) and 24 CFR 570.484(b).

Grantees receiving an allocation of CDBG-DR funds pursuant to the following appropriations acts must specifically request a waiver and alternative requirement from HUD in order apply the new national objective criteria established in this section of the notice: Public Law 109-148, 109-234, and 110-116 (Katrina, Rita, and Wilma); Public Law 110-252 and 110-328 (2008 Disasters), Public Law 111-112 (2010 disasters), and Public Law 112-55 (2011 disasters).

VI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228; and 14.269.

VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: July 31, 2017.

Janet Golrick,

Acting Deputy Secretary.

[FR Doc. 2017-16411 Filed 8-4-17; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2017-0037; FXIA1671090000-156-FF09A30000]

Foreign Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA).

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358-2281. To locate the Federal Register notice that announced our receipt of the application for each permit listed in this document, go to www.regulations.gov and search on the permit number provided in the tables in SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT:

Joyce Russell, (703) 358-2023 (telephone); (703) 358-2281 (fax); or DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA, as amended (16 U.S.C. 1531 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
12500C	Charles Waibel	82 FR 4914 January 17, 2017	4/13/2017
06382C	Richard Killion	82 FR 4914 January 17, 2017	4/13/2017
15671C	New Mexico State University/Timothy F. Wright	82 FR 4914 January 17, 2017	3/27/2017
93065B	University of South Carolina	81 FR 63788 September 16, 2016	1/12/2017
209142	Adalgisa Caccone	82 FR 14742 March 22, 2017	4/25/2017
13615C	Stevens Forest Ranch	82 FR 13486 March 13, 2017	05/01/17

EXHIBIT L

RELOCATION ASSURANCES**Acquisitions**

I certify that accurate information has been prepared and submitted in accordance with 49 CFR Part 24, Uniform Relocation Rental Assistance and Real Property Acquisition Policy of 1970, as amended, Final Rule and Notice. I further assure that if applicable:

1. Staff will follow URA requirements;
2. Staff will implement requirements as they relate to our project;

And if applicable:

3. Sufficient funds have been appropriated, reserved, set aside or otherwise committed to cover any anticipated relocation cost;
4. Families and individuals will have full opportunity to occupy comparable, decent, safe, and sanitary housing;
5. Relocation payments will be made promptly by the borrower and to the full extent for which tenants are eligible;
6. The project activities have been planned in a manner that will minimize hardships to tenants;
7. All tenants will be given a reasonable period of time to move and no one will be required to move unless a comparable replacement unit is available or provided for;
8. Relocation assistance and advisory services will be provided in accordance with the needs of the tenant.

Executed by _____;

Title: _____;

Signature: _____; on this _____ day

of _____ on behalf of (Borrower) _____

for the Grant Funding for (Project Name) _____.

EXHIBIT M

CDBG-DR Quarterly Progress Report
Buyout Projects

Project Title (select as applicable)	Address	# of Parcels Acquired Voluntarily	# of Housing Units Demolished	Housing Type	Acquisition Compensation to Owners	Update*
HCFD - Buyout - LMA Glenburnie and Cashiola				Homeowner - Single Family	\$ -	
HCFD - Buyout - LMA Braeburn Glen				Renter - Single Family		
HCFD - Buyout - LMA Langwood				Homeowner - Single Family		
					\$ -	

*Describe status of acquisition, procurement actions, permitting, construction/demolition, etc., as applicable.

EXHIBIT N



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every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

SUBRECIPIENT MONITORING AND MANAGEMENT

§ 200.330 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use

and creates a procurement relationship with the contractor. See § 200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 200.331 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal Award Identification.
 - (i) Subrecipient name (which must match registered name in DUNS);
 - (ii) Subrecipient's DUNS number (see § 200.32 Data Universal Numbering System (DUNS) number);
 - (iii) Federal Award Identification Number (FAIN);

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(iv) Federal Award Date (see § 200.39 Federal award date);

(v) Subaward Period of Performance Start and End Date;

(vi) Amount of Federal Funds Obligated by this action;

(vii) Total Amount of Federal Funds Obligated to the subrecipient;

(viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official;

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged, per § 200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (b) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, §§ 200.300 Statutory and national policy requirements

through 200.309 Period of performance, and Subpart F—Audit Requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (c) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and programmatic reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient

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from the pass-through entity as required by § 200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.338 Remedies for noncompliance of this part and in program regulations.

§ 200.332 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

RECORD RETENTION AND ACCESS**§ 200.333 Retention requirements for records.**

Financial records, supporting documents, statistical records, and all other non-Federal entity records perti-

nent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer

Presented to Commissioners Court

THE STATE OF TEXAS §
 COUNTY OF HARRIS §

FEB 25 2020

APPROVE G/E
 Recorded Vol _____ Page _____

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on FEB 25 2020, with the following members present, to-wit:

Lina Hidalgo
 Rodney Ellis
 Adrian Garcia
 Steve Radack
 R. Jack Cagle

County Judge
 Commissioner, Precinct No. 1
 Commissioner, Precinct No. 2
 Commissioner, Precinct No. 3
 Commissioner, Precinct No. 4

and the following members absent, to-wit: none,
 constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AMENDED AND RESTATED INTERLOCAL
 AGREEMENT
 BETWEEN THE HARRIS COUNTY FLOOD CONTROL DISTRICT
 AND THE CITY OF HOUSTON**

Commissioner A. Garcia introduced an order and made a motion that the same be adopted. Commissioner Ellis seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

		Yes	No	Abstain
AYES:	Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Steve Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. R. Jack Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

WHEREAS, the District was organized, created and authorized by the Texas Legislature in 1937 in response to devastating floods that struck the region in 1929 and 1935 to act as a duly constituted District of the County for the purpose of aiding, assisting and acting on behalf of the County in the performance of its governmental functions to promote the common good and general welfare of Harris County and to provide flood damage reduction projects that work, with appropriate regard for community and natural values; and

WHEREAS, the City's HCDD has among its duties the administration of the Community Development Block Grant Program, authorized under Title I of the Housing and Community Development Act of 1974, as amended ("Act"), and one of the primary

objectives of the programs authorized under the Act is the provision of decent housing and a suitable living environment principally for persons of low and moderate income; and

WHEREAS, the City Council of the City of Houston ("City Council") acting pursuant to City of Houston Ordinance No. 2016-705 passed and approved on September 14, 2016, authorized the submission of an Action Plan for Disaster Recovery – 2015 Flood Events ("Action Plan"), including an Application for Community Development Block Grant Disaster Recovery ("CDBG-DR15") funds associated with the 2015 Flood Events, to the United States Department of Housing and Urban Development ("HUD") pursuant to the Act and later entered into a Grant Agreement with HUD ("Grant Agreement") to receive federal funding for a CDBG-DR15 Flood Events Project under the Act; and

WHEREAS, the Application was approved and the City was awarded \$66,560,000 in CDBG-DR15 funds under the Federal Award Identification No. (FAIN) B-16-MH-48-0001 on December 07, 2016. The federal funds are made available under the Catalog of Federal Domestic Assistance (CFDA) No. 14.218, Community Development Block Grant/Entitlement Grants. The award will not be used for Research & Development (R&D).

WHEREAS, the Action Plan submitted as part of the Grant Agreement included a Strategic Buyout Program for certain low and moderate income areas identified by HCDD as eligible for funding under the Act, in compliance with federal regulations codified at 24 CFR Part 570, Billing Code: 4210-67 Department of Housing and Urban Development [Docket No. FR-5938-N-01] (Pub. L. 114-113) ("Federal Register Notices June 9, 2016"), as updated by Federal Register June 17, 2016 and Federal Register August 7, 2017 [Docket No. FR-6039-N-01] (Pub. Law 115-31) and other CDBG regulations and requirements applicable to the CDBG-DR15 Flood Events; and

WHEREAS, the District is currently administering a Voluntary Buyout Program in Harris County; and

WHEREAS, the primary goal of this Agreement is for the City to provide CDBG-DR15 Flood Event funds in an amount not to exceed \$10,660,000.00 to the District to perform voluntary property buyout services to eligible property owner applicants in certain neighborhoods of the City, including the purchase of structures in the floodplain, the demolition and/or removal of structures, and relocation of eligible households pursuant to the Harris County Relocation Assistance Regulations, pending Harris County Commissioners Court approval, or the Uniform Relocation Assistance And Real Property Acquisition Policies For Federal And Federally Assisted Programs, as amended by the District's policy to treat voluntary owners and mandatory owners equally for purposes of housing supplement, with a cap of \$31,000.00 for voluntary buyouts ("Relocation Assistance Policy"), as applicable to the Project ("Project"); and

WHEREAS, the District, among other things, will determine the eligibility and provide a list of property owners in certain neighborhoods identified by HCDD, whose property has been approved and deemed eligible based on Project requirements; and

WHEREAS, the neighborhoods/areas of interest (aligned with flood concentration areas identified in the City's Action Plan) identified by HCDD are Braeburn Glen, Glenburnie & Cashiola, and Langwood; and

WHEREAS, the District will attempt to negotiate a purchase agreement with those property owners whose property has been approved by the District for acquisition, that outlines the terms and conditions of the sale of their property in compliance with the Voluntary Buyout Program, and other applicable CDBG regulations and requirements that govern the CDBG-DR15 Flood Events Program; and

WHEREAS, the total budget for the Project shall not exceed \$10,660,000.00; and

WHEREAS, the Project will provide several benefits to the community, including; relocating families to higher ground and out of harm's way, eliminating future flood damages and health and safety risks for owners and rescuers, reducing repetitive subsidized flood insurance and federal disaster assistance, restoring floodplains to their natural and beneficial function for storm water storage, creating open space with the potential for community amenities (i.e. parks, gardens, playing fields, stormwater detention, etc.), and eliminating the threat of flooding in the affected targeted areas; and

WHEREAS, the "Scope of Work" attached hereto as **EXHIBIT B** and incorporated herein by reference, more particularly describes the Work to be performed by the District which will be funded under this Agreement ("Work"); and

WHEREAS, the Work will be carried out in accordance with the CDBG-DR15 Flood Events Program Standards and Requirements, including but not limited to those attached hereto and incorporated herein under **EXHIBIT D**; and

WHEREAS, this federal Voluntary Property Buyout Project will reduce the number of flood prone homes in low and moderate income areas of the City; and

WHEREAS, the City desires the competent performance of certain services more fully described in this Agreement; and

WHEREAS, the City and the District have entered into this Agreement wherein the District agrees to undertake planning, design, demolition and buyout of certain properties in the areas identified above which were damaged in the 2015 Flood Events and relocation of eligible households, during the term of this Agreement; and

WHEREAS, the above recitals are incorporated into this Agreement for all purposes; and

WHEREAS, the City is acting pursuant to Chapter 373 and 374 of the Texas Local Government Code.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

Section 1: The recitals set forth in this order are true and correct.

Section 2: County Judge Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District, an Amended and Restated Interlocal Agreement by and between the Harris County Flood Control District and the City of Houston for voluntary

property buyout services to eligible property owner applicants in certain neighborhoods of the City, including the purchase of structures in the floodplain, the demolition and/or removal of structures, and relocation of eligible households pursuant to the Relocation Assistance Policy, as defined in the Agreement, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.